



What Lies

BENEATH

The days of excavating blindly are over. BY LAWRENCE T. BOWMAN AND DAVID H. FISK

The days when a contractor could excavate without giving much thought to what underground facilities might lie beneath a job site – whether digging down into the earth to lay a foundation before building up, trenching for the installation of oil and gas pipelines, or grading a road – are over. Today, there can be underground lines, pipes and cables for communications, electric, oil, gas, water, sewage and storm drainage facilities, among others, located almost anywhere.

Every construction project that involves excavation work requires a call to 811 – the national “Call Before You Dig” number. However, even when the appropriate call center has been notified and the locations of

underground facilities have been marked, accidents can and will happen. Whether it is an explosion caused by striking a natural gas pipeline, an electrocution caused by contact with an electric cable, or damage to a sewage line, it is imperative to understand the duties and responsibilities of the various participants both before and after an accident occurs.

Every year, catastrophic events related to excavation work occur that cause property

damage, personal injuries and death. For example, on June 7, 2010, while drilling a hole to install a high-wire electrical pole in Johnson County, Texas, an auger struck a 36-inch natural gas pipeline, which ruptured and ignited. The incident burned five to 10 acres of land, damaged the auger and other equipment, injured eight people and killed the worker operating the auger. The Texas Railroad Commission (TRC) investigated the incident and determined that the operator of the pipeline failed to properly mark the line despite receiving two notifications from the call center.

The TRC also determined that the excavator/contractor failed to give the call center a second notice prior to excavating. Today, at least one lawsuit has been filed against the operator of the pipeline, among others, by the family of the worker killed in the explosion. Before starting an excavation project, a contractor needs to be familiar with and adhere to all applicable federal and state excavation-related rules and regulations.

The Transportation Equity Act for the 21st Century (TEA 21), signed into law on June 9, 1998, required the U.S. DOT to undertake a study of damage prevention practices associated with one-call notification systems. At the end of the study, TEA 21 required the DOT to publish a report identifying the practices of one-call notification systems that were the most and least successful in preventing damage to underground facilities and providing effective and efficient service to excavators and underground facility operators.

In August 1999, the DOT published its report – “Common Ground: Study of One-Call Systems and Damage Prevention Best Practices” (the “Common Ground Study”). The report found that the key elements for the prevention of excavation damage to underground facilities include: facility owner/operator membership in one-call centers; one-call centers maintaining accurate data; excavators providing advance notification of intent to excavate to the appropriate call center; one-call centers identifying facility owners/operators in the excavation area; one-call centers notifying facility owners/operators; facility owners/operators accurately locating and marking underground facilities; and excavators exercising proper and safe excavation practices.

The Common Ground Alliance (CGA), a

nonprofit organization comprised of individuals and entities in the underground utility and damage prevention industry, was created in 2000 following the publication of the Common Ground Study. CGA works to prevent damage to underground facilities by promoting the national 811 number to focus attention on the importance of calling before digging and by developing best practices for the industry. The FCC designated 811 as a national N-11 number in 2005 at the direction of Congress, and the number was launched to the public in May 2007.

Each state has different rules and regulations governing excavation work, and there will usually be state-specific duties imposed on excavators, call centers and operators. Typically, an excavator needs to contact the appropriate call center at least two business days before performing excavation work. Prior to giving notice to the call center, the excavator may be required to define the area to be excavated with white paint or other markings.

After receiving notification from the excavator, the call center notifies any operator of underground facilities in the area to be excavated. The operator then marks the approximate location of its underground facilities within a specific timeframe. There may be additional requirements that vary from state to state, including requirements for marking standards, tolerance zones, on-site meetings between the excavator and operator, when the excavator may proceed with excavation work, and the number of days a locate ticket is effective.

In the event of damage to an underground facility, the excavator is usually required to immediately notify the operator of the facility or the call center if the operator's identity is unknown. If the damage endangers life, health or property, or results in the release of gas or other flammable substances, then the excavator needs to call 911. In addition, the excavator may be required to notify all persons who might be in immediate danger and assist in the evacuation of such persons or keep ignition sources away from the jobsite. Failure to comply with a state's rules and regulations could subject an excavator or operator to administrative penalties in addition to civil liability.

After an incident occurs, the question that usually comes next is who is responsible for the damage to the underground facility and who can be held liable for any resulting property damage, personal injuries or deaths. The excavator could have misidentified the area to be excavated, or the facility owner or operator could have misidentified, mislocated or failed to identify its facilities pursuant to applicable laws.

Some states provide that the failure of an excavator or operator to comply with statutory provisions is sufficient evidence to establish a presumption that the excavator or operator acted negligently. Ultimately, it may be a question of fact for a judge or jury to decide, and copies of call center notifications will most likely be used as evidence regarding whether the excavator complied with the applicable notification requirements. Other communications between the parties after the operator received notification could also impact any final assessment of liability.

Before undertaking excavation work, a contractor should review and comply with the local rules and regulations. If the area to be excavated is in a rural area, the contractor should clearly describe the area and be as specific as possible when notifying the call center. The CGA also publishes a Best Practices Guide that could be considered an industry standard and should be consulted prior to performing any excavation work. ♦



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