

MN State Law Chapter 216 D One Call Excavation Notice System

216D.04 City, County and Design Engineer Responsibilities

This Statute describes the rights and responsibilities of utility companies (operators), contractors and project owners (city, county, project design engineers).

Background

In spring 2019 at the end of the legislative session, the Associated General Contractors (AGC) of America Minnesota chapter approached city and county representatives and Minnesota Office of Pipeline Safety (MNOPS) to discuss the need for education and legislative changes related to MN State Statute 216D. This material was prepared as a result of those discussions.

The Minnesota utility infrastructure community is under increasing pressure due to issues related to “bad locates”, delayed utility response, design and utility relocation issues. These are not new issues to utility infrastructure, but have been brought to the forefront by increasing concerns about the quality of as-built drawings, delayed response times and locate issues as well as concerns about relevant information potentially omitted from engineering plans and specifications.

AGC made the request for cities, counties and project design engineers to better fulfill the obligations detailed in 216D. The city and county engineers associations have made a commitment to educate engineers and engineering teams on the requirements of this Statute.

Why Are We Educating on MN 216D.04?

- Improve public safety
- To assure consistent compliance with the existing statute
- To save our cities, counties and other property owners time and money
- To increase legal compliance by 2021 and 2022 projects which are being designed at this time

What Does MNOPS Do?

MNOPS is a Division of the Minnesota Department of Public Safety. It has two main functions:

1. Inspect all regulated pipelines in Minnesota and investigate leaks and accidents
2. Enforce the state’s One Call Law, MS216D and MN Rule 7560. (Full text of the One Call Law can be found in the blue pages located at the back of the GSOC handbook and online at gopherstateonecall.org/phocadownload/GSOCHandbook2020.pdf or at <https://www.revisor.mn.gov/statutes/cite/216D> and <https://www.revisor.mn.gov/rules/7560/>)



- To alert project owners (cities, counties, design engineers) to the need to be intentional in their documentation of their MN 216D responsibilities
- To assure project owners have reviewed their rights and responsibilities stated in MN Statute 216D.04

216D.02 Notice to Excavator or Operator

Subdivision 1: Display and distribution

Local governmental units that issue permits for an activity involving excavation must continuously display an excavator and operator's notice at the location where permits are applied for and obtained. An excavator and operator's notice and a copy of sections 216D.03 to 216D. 07 must be furnished to each person obtaining a permit for excavation.

What this means: Local government units can obtain a copy of the above-described documents for distribution from GSOC (Gopher State One Call).

<http://www.gopherstateonecall.org/resources/downloads>

MN Statute: Section 216D.04

Subdivision 1A: Plans for Excavation; Land Survey

Any person, prior to soliciting bids or entering into a contract for excavation, shall provide a proposed notice to the notification center to obtain from the affected operators of underground facilities the type, size, and general location of underground facilities. Affected operators shall provide the information within 15 working days. An operator who provides information to a person who is not a unit of government may indicate any portions of the information which are proprietary and may require the person to provide appropriate confidentiality protection.

This is not the only part of the statute that applies to cities, counties and our design engineers, but it is one of the predominant sections. This section applies to most commercial construction, but does not apply to routine maintenance, installation of service lines or excavations performed on a unit of work or similar basis as further described in subparagraph (b) below.

Best Practices:

- Perform a 15-working day design request through GSOC and request the utility owner provide contact information for their representative with the maps. Surveyors may also state your request for field locates by submitting a Boundary Survey locate request.
- Make sure to note the dates and times of when you submit your requests. If there are facility operators who don't provide the requested info within 15 working days, GSOC or MNOPS can support you in your effort to acquire the information.



- Periodically review the GSOC website for utility owner status to any locate request: <https://mn.itic.occinc.com/mnrecApp/ticketSearchAndStatus.jsp?db=mn>
 - If utility crossings are critical locations for your project design, potholing during the design process will give a higher level of accuracy in determining precise utility location.
 - Facility operators should consider whether information may be best communicated by furnishing maps, performing a locate or furnishing other information.
 - Facility operators should provide available information on abandoned or out of service facilities.
- (a) *The information obtained from affected operators must be submitted on the final drawing used for the bid or contract and must depict the utility quality level of that information. This information must be updated not more than 90 days before completion of the final drawing used for the bid or contract.*

What this means:

- The data received from the utility company shall be placed on the plan sheets and the level of accuracy ASCE 38-02 (A-D) shall be clearly marked on all plan sheets.
- Within 90 days prior to the bid advertisement, perform utility design requests. Utility data must be checked and updated for any additions or corrections that may have occurred.

Best Practices:

- Perform a secondary 15-working day design request through GSOC 45 days prior to advertisement for bids. Clearly show quality level on the plan title sheet.
 - The level of accuracy of the utilities should be clearly marked on all plan sheets that utilities appear on.
 - If the utility has been located by potholing or other means and an XYZ location can be established, the quality level should clearly be noted and placed on profiles and cross sections.
 - Cities, counties and design engineers could consider using color matching the current color code standard used by the American Public Works Association on their plan sheets: yellow for gas, red for electric, etc.
 - Some project sites/locations should have a higher level of accuracy, such as hospitals, airport, schools, etc.
 - Notes on plan sheets such as: “Utilities to be field verified by contractor” are problematic for the contractors and any other utility owner that may need to relocate utilities. Consider potholing during design and putting an item on the bid tab for potholing.
- (b) *This subdivision does not apply to bids and contracts for:*
- (1) *Routine maintenance of underground facilities or installation, maintenance, or repair of service lines;*
 - (2) *excavation for operators of underground facilities performed on a unit of*



work or similar basis; or

(3) *excavation for home construction and projects by homeowners.*

- (c) *A person required by this section to show existing underground facilities on its drawings shall conduct one or more preliminary design meetings during the design phase to communicate the project design and coordinate utility relocation. Affected facility operators shall attend these meetings or make other arrangements to provide information.*

Best Practices:

- An annual meeting with all affected utility companies is recommended to review a city or county's 3- to 5-year capital improvement plan
 - Formalize the process to notify utilities of the upcoming work and when they need to be completed with the work. MNDOT uses "Notice and Orders." Cities and counties should look at this process.
 - For complex projects, more than one preliminary design meeting is recommended for utility coordination. These meetings could be held at the start of a project, then at the 30%, 60% and 90% design progress phases.
 - Cities and counties should actively engage with the utility operators to coordinate relocation.
 - If facility operators do not attend, documentation should be placed in the project file and a second meeting should be held to assure all information is communicated and the design and/or relocation of utilities can be properly addressed.
 - Document dates of each meeting and note which facility operators are (or are not) attending. If there is a facility operator who habitually does not provide you the requesting information or fails to attend meets, MNOPS can assist you.
 - Some franchise fee agreements have clauses stating that utilities must be relocated prior to construction. Review your franchise agreements and know your rights if necessary enforcement of the franchise agreement may be needed.
- (d) *A person required by this section to show existing underground facilities on its drawings shall conduct one or more preconstruction meetings to communicate the project design and coordinate utility relocation. Affected facility operators and contractors shall attend these meetings or make other arrangements to provide information. (e) This subdivision does not affect the obligation to provide a notice of excavation as required under subdivision 1.*
- (e) *This subdivision does not affect the obligation to provide a notice of excavation as required under subdivision 1.*

What this means: "Preconstruction" could mean prior to the bid opening, during the bid advertising time frame or after the bid was awarded to the contractor prior to beginning of construction. A city or county could have a complex project where multiple meetings occur. Utility operator representatives are required to attend these meetings or make arrangements with the project owner to assure all pertinent



information is shared, for construction scheduling and relocations, etc.

Best Practices:

- If a critical facility operator does not attend, the city, county or design engineer should schedule another meeting to assure all information is communicated and the design and/or relocation of utilities can be properly addressed
- Attendance at meetings should be documented in your project files
- If facility operators habitually do not attend or make other arrangements, document this and contact MNOPS if there is repeated lack of attendance and other satisfactory arrangements are not made
- Enforce franchise agreement rules if they exist
- Again, it's essential to document the date of each pre-con meeting and the attendees.

GSOC welcomes feedback from stakeholders on these best practices.

MNOPS Enforcement

MS216D.08 Civil Penalties

Subdivision 1: Penalties

A person who is engaged in excavation for remuneration... who violates sections [216D.01](#) to [216D.07](#) is subject to a civil penalty to be imposed by the commissioner not to exceed \$1,000 for each violation per day of violation. An operator subject to section [299F.59, subdivision 1](#), who violates sections [216D.01](#) to [216D.07](#) is subject to a civil penalty to be imposed under section [299F.60](#)...

What this means: Levels of enforcement may include verbal warning, a Notice of Probable Violation with no civil penalty (official warning letter) and a Notice of Probable Violation with civil penalty up to \$1,000 based on severity of the issue and mitigating circumstances.

Stakeholders are encouraged to cooperate and use good faith and all reasonable efforts to attempt to work through any compliance issues with other stakeholders. MNOPS is available to provide support for compliance with one call law requirements where those efforts are not successful.

What Does MNOPS Enforce?

MNOPS is a complaint-based organization; it has received very few complaints regarding this requirement and has issued minimal enforcement.

- Compliance with the statute requires documentation
 - Engineering firm: documentation of pre-bid and pre-con meetings
 - Contractor: plans, specs and other job-related documentation

