

## WATER & SEWER UTILITIES OTHER STATES

### Notification Center Membership:

- Three states currently don't recognize water utilities or require notification center membership: Kansas, Vermont and West Virginia
  
- Two other states don't mandate membership by all water utilities:
  - Louisiana: Water and Sewer are part of the utility definition. Water utilities ARE mandated to be members EXCEPT for parish governments and incorporated municipalities.
  - Texas: Water and Sewer are part of the utility definition. Membership is not mandated but voluntary. Most large utilities are members.

Note: Previously, Florida had exempted smaller municipalities but that provision has since expired and now ALL are mandated to membership. Additionally, Arkansas has some minor exemptions which are currently being removed also.

Note: These statistics do not include sewer "laterals" as several states exempt those.

ALL other states MANDATE "membership" in a notification center. Some make provisions for special circumstances, but nonetheless do require membership.

In summary, only five states (Kansas being one of them) do not mandate **all** water & sewer participation in a notification center.

### Limited membership language from some other states:

- Ohio: (The water/sewer utility) may elect to participate on a limited basis and if it does so, it **shall** register the location of its underground utility facilities only by identifying the municipal corporations, and outside the limits of a municipal corporation, the townships by county in which it has facilities. The excavator then contacts the utility.
  - Limited basis locating language: If the utility cannot accurately mark the approximate location, the utility shall mark the approximate location to the best of its ability, notify the excavator that the markings may not be accurate, and provide additional guidance to the excavator in locating the facilities as needed during the excavation.

- Colorado: Colorado has a two-tier membership provision. Most are required to be a “tier one” member, which is FULL membership. Municipalities and counties are allowed to be a “tier two” member, which is limited.
  - Tier Two membership description: Tier two members shall pay a one-time membership fee of twenty-five dollars to the notification association. The notification association shall not assess any charges, costs, or fees to any tier two member other than the one-time membership fee. ALL tier two members shall provide the association with the accurate information regarding the boundaries of such member’s service area, they type of underground facility that may be encountered within the service area, and the name, address, and telephone number of a person who shall be the designated contact person for information regarding such member’s underground facilities. A tier two member shall also provide geographical information concerning underground facilities it owns or operates which are not located within the designated service area to the notification association. The notification association shall provide any person who contacts the association regarding information concerning underground facilities owned or operated by a tier two member with the name of the aforementioned person.

Note: Missouri requires all to be a member but has a unique provision: **Note on notification center:** On or after 1/1/03, an owner or operator of underground facilities (as a participant in the notification center ... will maintain participation in the notification center UNLESS it is determined that the inaccuracy rate of the notification center reaches 15% (the number of notifications of an excavation where operator has no underground facilities at the excavation site divided by the total number of notifications to an owner or operator during any 12 month period) at which time such owner or operator may withdraw from participation in the notification center by providing written notice to the center of its withdrawal. Such withdrawal may not be used in any legal proceeding to claim the operator failed to comply with any standard of care. However, the owner or operator shall then also publish, at least quarterly, in a newspaper or other publication of general circulation in counties that have underground facilities a statement that the owner or operator has underground facilities and who the excavator shall contact regarding its intent to excavate.

**Language from other states that have guidance language for locating facilities although membership is full and not limited:**

Arizona: If operator is unable to properly locate within specified time they shall promptly notify excavator and assign one or more representatives to be present at the excavation site at all pertinent times as requested by the excavator to provide facility location services until the facilities have been located and marked. The excavator is not responsible for damages as long as the representative is present and as long as it wasn't caused by excavator's negligence.

Georgia: In the event that (any) unlocatable facility becomes exposed when the facility owner or operator is present, such facility shall be made locatable through the use of a permanent marker or an updating of permanent records. If a sewer lateral is

unlocatable, a triangular green mark shall be placed at the sewer main pointing at the address in question.

Montana: Underground facility owners are to provide "the best available information as to their locations" for identified but unlocatable underground facilities; however, if an excavator complies with their part of the law, they will not be responsible for damages.

North Dakota: Water facilities are **not** bound to the subscribed tolerance zone. However, they need to mark as accurately as possible and the excavator may proceed with caution. When excavation operations approach the estimated location of the underground facility to convey water, the exact location of the facility must be determined by safe and acceptable means. The uncovered facility must be supported and protected to prevent damage.

Oregon: For unlocatable underground facilities (cannot be marked with reasonable accuracy, including nonconductive sewers and nonmetallic underground facilities that have no trace wires) the operator shall provide the excavator the best description available to the operator in the area of the proposed excavation including as-constructed drawings, or other facility maps that are maintained by the facility operator. The operator does not have to mark underground facilities which are at a depth greater than the excavator plans to excavate but does have to notify the excavator of their existence.

Virginia: Note: a going-forward provision: No excavator shall be held liable for the cost to repair damage to any such systems constructed or replaced prior to 1/1/95, unless such systems are located. (May want to add some kind of phased-in requirement for updated maps and specify a date upon and after which any newly installed facility or otherwise discovered facility must be on map and deemed locatable.) However, I can find no language that gives guidance on current facilities that are unlocatable.

As far as being able to locate their facilities, many states use general language such as "that can be **reasonably** located using accepted methods and current technologies" and then leave it up to the excavator/operator to work out and determine who is responsible when damage occurs. The language used by **Ohio** is close to what many other states use, but is the most straightforward.