

# Colorado Revised Statutes 2018

## TITLE 9

### SAFETY - INDUSTRIAL AND COMMERCIAL

#### ARTICLE 1.5

##### Excavation Requirements

**9-1.5-101. Legislative declaration.** The purpose of this article is to prevent injury to persons and damage to property from accidents resulting from damage to underground facilities by excavation. This purpose shall be facilitated through the creation of a single statewide notification system to be administered by an association of the owners and operators of underground facilities. Through the association, excavators shall be able to obtain crucial information regarding the location of underground facilities prior to excavating and shall thereby be able to greatly reduce the likelihood of damage to any such underground facility or injury to any person working at an excavation site.

**Source: L. 81:** Entire article added, p. 520, § 1, effective October 1. **L. 93:** Entire article amended, p. 498, § 1, effective September 1.

**9-1.5-102. Definitions.** As used in this article 1.5, unless the context otherwise requires:

(1) "ASCE 38" means the standard for defining the quality of an underground facility location as defined in the current edition of the American Society of Civil Engineers' "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data (CI/ASCE 38-02)" or an analogous successor standard as determined by the safety commission.

(1.5) "Damage" includes the penetration or destruction of any protective coating, housing, or other protective device of an underground facility, the denting or partial or complete severance of an underground facility, or the rendering of any underground facility inaccessible.

(2) "Emergency situations" includes ruptures and leakage of pipelines, explosions, fires, and similar instances where immediate action is necessary to prevent loss of life or significant damage to property, including, without limitation, underground facilities, and advance notice of proposed excavation is impracticable under the circumstances.

(3) "Excavation" means any operation in which earth is moved or removed by means of any tools, equipment, or explosives and includes augering, backfilling, boring, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, hydro excavating, postholing, and tunneling. "Excavation" does not include:

- (a) Routine maintenance on existing planted landscapes; or
- (b) An excavation by a rancher or a farmer, as defined in section 42-20-108.5, occurring on a ranch or farm when the excavation involves:
  - (I) Any form of existing agricultural activity that is routine for that ranch or farm;

(II) Land clearing if the activity does not involve deep ripping or deep root removal of trees or shrubs; or

(III) Routine maintenance of:

(A) An existing irrigation facility if the facility has been subjected to maintenance in the previous twenty-four months; or

(B) Existing fence lines.

(3.4) "Gravity-fed system" means any underground facility that is not pressurized and that utilizes gravity as the only means to transport its contents. These systems include sanitary sewer lines, storm sewer lines, and open-air irrigation ditches.

(3.7) "Licensed professional engineer" means a professional engineer as defined in section 12-25-102.

(4) "Notification association" or "association" means the statewide notification association of owners and operators of underground facilities created in section 9-1.5-105.

(5) (a) "Operator" or "owner" means any person, including public utilities, municipal corporations, political subdivisions, or other persons having the right to bury underground facilities in or near a public road, street, alley, right-of-way, or utility easement.

(b) "Operator" or "owner" does not include any railroad.

(6) "Person" means any individual acting on his or her own behalf, sole proprietor, partnership, association, corporation, or joint venture; the state, any political subdivision of the state, or any instrumentality or agency of either; or the legal representative of any of them.

(6.5) "Routine maintenance" means a regular activity that happens at least once per year on an existing planted landscape if earth is not disturbed at a depth of more than twelve inches by nonmechanical means or four inches by mechanical means and if the activities are not intended to permanently lessen the ground cover or lower the existing ground contours. Mechanical equipment used for routine maintenance tasks shall be defined as aerators, hand-held rototillers, soil injection needles, lawn edgers, overseeders, and hand tools.

(6.7) "Subsurface utility engineering notification" means a notice to the notification association that a project is being designed by a licensed professional engineer and that the project will include the investigation and depiction of existing underground facilities that meet or exceed the ASCE 38 standard.

(6.8) "Subsurface utility engineering-required project" means a project that meets all of the following conditions:

(a) The project involves a construction contract with a public entity, as that term is defined in section 24-91-102;

(b) The project involves primarily horizontal construction and does not involve primarily the construction of buildings;

(c) (I) The project:

(A) Has an anticipated excavation footprint that exceeds two feet in depth and that is a contiguous one thousand square feet; or

(B) Involves utility boring.

(II) For purposes of this subsection (6.8)(c), the term "two feet in depth" does not include rotomilling, and the contiguous one thousand square feet does not include fencing and signing projects.

(d) The project requires the design services of a licensed professional engineer.

(6.9) "Underground damage prevention safety commission" or "safety commission" means the enforcement authority established in section 9-1.5-104.2.

(7) "Underground facility" means any item of personal property which is buried or placed below ground for use in connection with the storage or conveyance of water or sewage, electronic, telephonic, or telegraphic communications or cable television, electric energy, or oil, gas, or other substances. "Item of personal property", as used in this subsection (7), includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments thereto.

**Source:** **L. 81:** Entire article added, p. 520, § 1, effective October 1. **L. 93:** Entire article amended, p. 498, § 1, effective September 1. **L. 2000:** (3) and (6) amended, p. 685, § 1, effective May 23. **L. 2009:** (2) and (3) amended and (6.5) added, (HB 09-1092), ch. 38, p. 151, § 1, effective August 5. **L. 2018:** IP, (1), and (3) amended and (1.5), (3.4), (3.7), and (6.7) to (6.9) added, (SB 18-167), ch. 256, p. 1561, § 1, effective August 8.

**Editor's note:** Section 12 of chapter 256 (SB 18-167), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after August 8, 2018.

**9-1.5-103. Plans and specifications - notice of excavation - duties of excavators - duties of owners and operators - fee - repeal.**

(1) (Deleted by amendment, L. 93, p. 499, § 1, effective September 1, 1993.)

(2) Architects, engineers, or other persons designing excavation shall obtain general information as to the description, nature, and location of underground facilities in the area of such proposed excavation and include such general information in the plans or specifications to inform an excavation contractor of the existence of such facilities and of the need to obtain information thereon pursuant to subsection (3) of this section.

(2.4) At the project owner's expense, a licensed professional engineer designing for a subsurface utility engineering-required project shall:

(a) Notify the notification association with a subsurface utility engineering notification;

(b) Either:

(I) Meet or exceed the ASCE 38 standard for defining the underground facility location in the stamped plans for all underground facilities within the proposed excavation area; or

(II) Document the reasons why any underground facilities depicted in the stamped plans do not meet or exceed ASCE 38 utility quality level B or its successor utility quality level;

(c) Attempt to achieve ASCE 38 utility quality level B or its successor utility quality level on all utilities within the proposed excavation area unless a reasonable rationale by a licensed professional engineer is given for not doing so; and

(d) Document the reasons why any underground facilities depicted in the stamped plans do not meet or exceed ASCE 38 utility quality level A or its successor utility quality level for underground facilities at the point of a potential conflict with the installation of a gravity-fed system.

(2.7) An underground facility owner that receives a subsurface utility engineering notification or other request for information from a designer shall respond to the request within

ten business days after the request, not including the day of actual notice, in one or more of the following ways:

(a) Provide underground facility location records that give the available information on the location, not to include depth, of underground facilities within the project limits;

(b) Provide a mark on the ground that gives the approximate location, not to include depth, of its underground facilities within the project limits; or

(c) Provide the available information as to the approximate location, not to include depth, of its underground facilities within the project limits.

(3) (a) (I) (A) Except in emergency situations and except as to an employee or an employer's contractor with respect to the employer's underground facilities or as otherwise provided in an agreement with an owner or operator, a person shall not make or begin excavation without first notifying the notification association and, if necessary, the tier two members having underground facilities in the area of the excavation. Notice may be given in person, by telephone, by electronic methods approved by the notification association, or in writing if delivered.

(B) This subsection (3)(a)(I) is repealed, effective January 1, 2021.

(II) Effective January 1, 2021, except in emergency situations and except as to an employee or an employer's contractor with respect to the employer's underground facilities, a person shall not make or begin excavation without first notifying the notification association. Notice may be given by electronic methods approved by the notification association or by telephone.

(b) Notice of the commencement, extent, and duration of the excavation work shall be given at least two business days prior thereto not including the day of actual notice.

(c) (I) Any notice given pursuant to subsection (3)(b) of this section must include the following:

(A) The name and telephone number of the person who is giving the notice;

(B) The name and telephone number of the excavator; and

(C) The specific location, starting date, and description of the intended excavation activity.

(II) If an area of excavation cannot be accurately described on the locate request, the excavator shall notify the owner or operator of the area of excavation using one or more of the following methods:

(A) Physical delineation with white marks on a hard surface area;

(B) Electronic delineation on a map, plan sheet, or aerial photograph that can be transmitted electronically from the excavator to the facility owner or operator through the notification association; or

(C) Scheduling an on-site meeting between the excavator and the owner or operator.

(d) An excavator requiring existing marked underground facilities to be exposed may list a single secondary excavator on its notice to the notification association and employ the services of the listed secondary excavator to expose marked underground facilities using reasonable care to not damage the facilities. The secondary excavator may expose marked underground facilities under the excavator's notice to the notification association only if the excavator has complied with this subsection (3).

(4) (a) (I) Any owner or operator receiving notice pursuant to subsection (3) of this section shall, at no cost to the excavator and within two business days, not including the day of

actual notice, use reasonable care to advise the excavator of the location, number, and size of any underground facilities in the proposed excavation area, including laterals in the public right-of-way, by marking the location of the facilities with clearly identifiable markings within eighteen inches horizontally from the exterior sides of the facilities. The markings must include the depth, if known, and shall be made pursuant to the uniform color code as approved by the American Public Works Association. The markings must meet the marking standards as established by the safety commission pursuant to section 9-1.5-104.2 (1)(a)(I). The documentation required by this subsection (4)(a)(I) shall be provided to the excavator through the notification association and must meet or exceed any quality standards established by the safety commission pursuant to section 9-1.5-104.2 (1)(a)(I). In addition to the markings, the owner or operator shall provide for each of its underground facilities:

(A) Documentation listing the owner's or operator's name and the size and type of each marked underground facility; and

(B) Documentation of the location of the underground facilities in the form of a digital sketch, a hand-drawn sketch, or a photograph that includes a readily identifiable landmark, where practicable.

(II) A sewer system owner or operator shall provide its best available information when marking the location of sewer laterals in the public right-of-way with clearly identifiable markings. "Best available information" includes tap measurements and historic records. If the sewer lateral can be electronically located, the sewer system owner or operator shall mark and document the location of the sewer laterals in accordance with this subsection (4)(a). If a sewer system owner or operator of a sewer lateral cannot electronically locate the sewer lateral, the excavator shall find the sewer lateral.

(III) The marking of customer-owned laterals in the public right-of-way is for informational purposes only, and an owner or operator is not liable to any party for damages or injuries resulting from damage done to customer-owned laterals.

(IV) If a person is involved in excavating across a preexisting underground facility, the owner of such facility shall, upon a predetermined agreement at the request of the excavator or the owner, provide on-site assistance. Any owner or operator receiving notice concerning an excavator's intent to excavate shall use reasonable care to advise the excavator of the absence of any underground facilities in the proposed excavation area by providing positive response documentation to the excavator through the notification association that no underground facilities exist in the proposed excavation area. An owner or operator shall, within the time limits specified in subsection (6) of this section, provide to the excavator evidence, if any, of underground facilities abandoned after January 1, 2001, known to the owner or operator to be in the proposed excavation area.

(b) The marking of underground facilities shall be considered valid so long as the markings are clearly visible, but not for more than thirty calendar days following the due date of the locate request initiated pursuant to subsection (3) of this section; except that, if an excavation notice is limited to only annual road maintenance that does not exceed six inches in depth conducted by a government agency on an existing unpaved road, the marking shall be considered valid for up to one hundred eighty days. Upon receipt of the notification, an owner or operator has ten business days to coordinate the excavation activity with the government agency. If an excavation has not been completed within the applicable period, the excavator shall notify the

notification association at least two business days, not including the day of actual notice, before the end of the applicable period.

(b.5) Any person who willfully or maliciously removes a marking used by an owner or operator to mark the location of any underground facility, except in the ordinary course of excavation, is guilty of a class 2 misdemeanor, and, upon conviction thereof, in addition to any order for restitution, shall be punished by a fine of not more than five thousand dollars for each offense, by imprisonment for not more than one year, or by both such fine and imprisonment.

(c) (I) (A) When a person excavates within eighteen inches horizontally from the exterior sides of any marked underground facility, the person shall use nondestructive means of excavation to identify underground facilities and shall otherwise exercise reasonable care to protect any underground facility in or near the excavation area. When utilizing trenchless excavation methods, the excavator shall expose underground facilities and visually observe the safe crossing of marked underground facilities when requested to do so by the underground facility owner or operator or the government agency that issued a permit for the excavation.

(B) The excavator shall maintain adequate and accurate documentation, including photographs, video, or sketches and documentation obtained through the notification association, at the excavation site on the location and identification of any underground facility and shall maintain adequate markings of any underground facility throughout the excavation period. A person shall not use a subsurface utility engineering notification for excavation purposes.

(II) (A) If the documentation or markings maintained pursuant to subsection (4)(c)(I) of this section become lost or invalid, the excavator shall notify the notification association or the affected owner or operator through the notification association and request an immediate reverification of the location of any underground facility. Upon receipt of the notification, the affected owner or operator shall respond as quickly as is practicable. The excavator shall cease excavation activities at the affected location until the location of any underground facilities has been reverified.

(B) If the documentation or markings maintained pursuant to subsection (4)(c)(I) of this section are determined to be inaccurate, the excavator shall immediately notify the affected owner or operator through the notification association and shall request an immediate reverification of the location of any underground facility. Upon receipt of the notification, the affected owner or operator shall respond as quickly as practicable. The excavator may continue excavation activity if the excavator exercises due caution and care to prevent damaging any underground facility.

(III) If a person performing routine maintenance discovers an underground facility in the area where the routine maintenance is being performed, the person shall notify the notification association and the affected owner or operator as quickly as practicable and request an immediate verification of the location of any underground facility. Upon receiving notification, the affected owner or operator shall respond as quickly as practicable. The person shall cease routine maintenance activities in the immediate area, as determined by exercising due caution and care, until the location of any underground facilities has been verified.

(5) In emergency situations, excavators shall take such precautions as are reasonable under the circumstances to avoid damage to underground facilities and notify affected owners or operators and the notification association as soon as possible of such emergency excavations. In the event of damage to any underground facility, the excavator shall immediately notify the

affected owner or operator and the notification association of the location and extent of such damage.

(6) If documentation or markings requested and needed by an excavator pursuant to subsection (4) of this section are not provided by the owner or operator within two business days, not including the day of actual notice, or such later time as agreed upon by the excavator and the owner or operator, or, if the documentation or markings provided fail to identify the location of the underground facilities, the excavator shall immediately give notice through the notification association to the owner or operator, may proceed with the excavation, and is not liable for such damage except upon proof of the excavator's lack of reasonable care.

(6.5) If positive response required pursuant to subsection (4) of this section is not provided by the owner or operator within two business days, not including the day of actual notice, or by a later time as otherwise agreed upon in writing, the notification association shall send an additional renotification to that owner or operator. The notification association shall continue to send out renotifications daily until the notification association receives the positive response.

(7) (a) In the event of damage to an underground facility, the excavator, owner, and operator shall cooperate to mitigate damages to the extent reasonably possible, including the provision of in-kind work by the excavator where technical or specialty skills are not required by the nature of the underground facility. Such in-kind work may be under the supervision and pursuant to the specifications of the owner or operator.

(b) If damage to an underground facility meets or exceeds the reporting threshold as established by the notification association pursuant to paragraph (c) of this subsection (7), the owner or operator of the damaged underground facility shall provide the information listed in subparagraphs (I) to (VII) of paragraph (c) of this subsection (7) to the notification association within ninety days after service has been restored.

(c) The notification association shall create and publicize to its members a reporting process, including the availability of electronic reporting and a threshold at which reporting is required, to compile the following information:

(I) The type of underground facility that was damaged;

(II) Whether notice of the intention to excavate was provided to the notification association;

(III) Whether the underground facility had been validly marked prior to being damaged;

(IV) The type of service that was interrupted;

(V) Repealed.

(VI) The duration of the interruption; and

(VII) The location of the area where the underground facility was damaged.

(d) The notification association shall include a statistical summary of the information provided to it under this subsection (7) in the annual report required under section 9-1.5-105 (2.6).

(e) (I) On or before July 1 of each year, the notification association shall prepare and submit to the safety commission an annual report for each owner or operator summarizing the following data from the prior calendar year:

(A) The number of locate requests submitted to the owner or operator pursuant to subsection (4) of this section;

(B) The number of notices submitted to the owner or operator pursuant to subsection (6) of this section;

(C) The percentage of locate requests resulting in notices submitted to the owner or operator pursuant to subsection (6) of this section;

(D) The number of renotifications submitted to the owner or operator pursuant to subsection (6.5) of this section; and

(E) The percentage of locate requests resulting in renotifications submitted to the owner or operator pursuant to subsection (6.5) of this section.

(II) The notification association shall make the data in the annual report electronically accessible to the safety commission for customized reports or research.

(8) A person who performs maintenance shall take reasonable care when disturbing the soil.

(9) If damage results in the escape of any interstate or intrastate natural gas or other gas or hazardous liquid, the excavator or person that caused the damage shall promptly report to the owner and operator and the appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number. The reporting is in addition to any reporting required to be made to any state or local agency.

(10) All new underground facilities, including laterals up to the structure or building being served, installed on or after August 8, 2018, must be electronically locatable when installed.

(11) Nothing in this article 1.5 affects or impairs any local ordinances or other provisions of law requiring permits to be obtained before an excavation. A permit issued by a government agency does not relieve an excavator from complying with this article 1.5.

**Source: L. 81:** Entire article added, p. 521, § 1, effective October 1. **L. 93:** Entire article amended, p. 499, § 1, effective September 1. **L. 2000:** (4)(a), (4)(c), (6), and (7) amended and (4)(b.5) added, p. 685, § 2, effective May 23. **L. 2009:** (4)(c)(III) and (8) added, (HB 09-1092), ch. 38, p. 152, §§ 2, 3, effective August 5. **L. 2018:** (2.4), (2.7), (6.5), (7)(e), and (9) to (11) added, (3)(a), (3)(c), (3)(d), (4)(a), (4)(b), (4)(c)(I), (4)(c)(II), and (6) amended, and (7)(c)(V) repealed, (SB 18-167), ch. 256, p. 1563, § 2, effective August 8.

**Editor's note:** Section 12 of chapter 256 (SB 18-167), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after August 8, 2018.

#### **9-1.5-104. Injunctive relief. (Deleted by amendment)**

**Source: L. 81:** Entire article added, p. 522, § 1, effective October 1. **L. 93:** Entire article amended, p. 502, § 1, effective September 1.

**9-1.5-104.2. Underground damage prevention safety commission - creation - review of violations - enforcement - rules.** (1) (a) There is hereby created the underground damage prevention safety commission in the department of labor and employment. The safety commission is transferred to the department by a **type 2** transfer as that term is defined in section 24-1-105. The safety commission shall:



(I) Advise the notification association and other state agencies, the general assembly, and local governments on:

(A) Best practices and training to prevent damage to underground utilities;

(B) Policies to enhance public safety, including the establishment and periodic updating of industry best standards, including marking and documentation best practices and technology advancements; and

(C) Policies and best practices to improve efficiency and cost savings to the 811 program, including the review, establishment, and periodic updating of industry best standards, to ensure the highest level of productivity and service for the benefit of both excavators and owners and operators; and

(II) Review complaints alleging violations of this article 1.5 involving practices related to underground facilities and order appropriate remedial action or penalties.

(b) The safety commission and the notification association shall enter into a memorandum of understanding to facilitate implementation and administration of this section and sections 9-1.5-104.4, 9-1.5-104.7, and 9-1.5-104.8. The memorandum of understanding must include provisions outlining the roles and responsibilities of the safety commission regarding statewide enforcement and the roles and responsibilities of the notification association in administering the notification association as outlined in section 9-1.5-105.

(c) Notwithstanding the powers and duties assigned to the safety commission, this section and section 9-1.5-104.4 do not apply to a home rule county, city and county, municipality, or power authority established pursuant to section 29-1-204 (1), and nothing in this article 1.5 authorizes the safety commission to impose a penalty on or enforce a recommendation or remedial action regarding an alleged violation of this article 1.5 against a home rule county, city and county, municipality, or power authority; except that:

(I) The safety commission shall:

(A) Inform a home rule county, city and county, municipality, or power authority of an alleged violation of this article 1.5; and

(B) At the request of the applicable home rule county, city and county, municipality, or power authority, suggest corrective action; and

(II) Nothing in this subsection (1)(c) prohibits a home rule county, city and county, municipality, or power authority from participating in proceedings of the safety commission.

(d) The governing body of a home rule county, city and county, municipality, or power authority established pursuant to section 29-1-204 (1) shall adopt by resolution, ordinance, or other official action either:

(I) Its own damage prevention safety program similar to that established pursuant to this article 1.5; or

(II) A waiver that delegates its damage prevention safety program to the safety commission.

(2) (a) The governor shall appoint the following fifteen members of the safety commission, taking into consideration nominations made pursuant to this subsection (2)(a), subject to consent by the senate:

(I) One individual nominated by Colorado Counties, Inc., to represent counties;

(II) One individual nominated by the Colorado Municipal League to represent municipalities;

(III) One individual nominated by the Special District Association of Colorado to represent special districts;

(IV) One individual nominated by Colorado's energy industry to represent energy producers;

(V) One individual nominated by the Colorado Contractors Association to represent contractors;

(VI) Two individuals nominated by the excavator members of the notification association to represent excavators;

(VII) One individual nominated by the American Council of Engineering Companies of Colorado to represent engineers;

(VIII) One individual nominated by investor-owner utilities to represent investor-owner utilities;

(IX) One individual nominated by the Colorado Rural Electric Association to represent rural electric cooperatives;

(X) One individual nominated by the Colorado Pipeline Association to represent pipeline companies;

(XI) One individual nominated by the Colorado telecommunications and broadband industry to represent telecommunications and broadband companies;

(XII) One individual nominated by the Colorado Water Utility Council to represent water utilities;

(XIII) One individual nominated by the department of transportation to represent transportation; and

(XIV) One individual nominated by the commissioner of agriculture who is actively engaged in farming or ranching.

(b) The governor shall make initial appointments by January 1, 2019. The members' terms of office are three years; except that the initial term of one of the members appointed pursuant to:

(I) Subsections (2)(a)(I) to (2)(a)(V) of this section is one year; and

(II) Subsections (2)(a)(VI) to (2)(a)(X) of this section is two years.

(c) Within six months after its creation, the safety commission shall adopt bylaws and provide for those organizational processes that are necessary to complete the safety commission's tasks.

(d) The safety commission may promulgate rules to implement this section and sections 9-1.5-104.4, 9-1.5-104.7, and 9-1.5-104.8 and may revise the rules as needed.

(3) The safety commission shall meet at least once every three months. The safety commission shall operate independently of the notification association; however, the notification association and the department of labor and employment shall provide administrative support to the safety commission in performing its duties as outlined in this section.

(4) The safety commission may review complaints of alleged violations of this article 1.5. Any person may bring a complaint to the safety commission regarding an alleged violation. A person who brings a frivolous complaint, as determined by the safety commission, commits a minor violation and is subject to a fine as authorized by section 9-1.5-104.4.

(5) To review a complaint of an alleged violation, the safety commission shall appoint at least three and not more than five of its members as a review committee. The review committee must include the same number of members representing excavators and owners or operators and

at least one member who does not represent excavators or owners or operators. A safety commission member who has a conflict of interest with regard to a particular matter shall recuse himself or herself from serving on a review committee with regard to that matter.

(6) (a) Before reviewing a complaint, the review committee shall notify the person making the complaint and the alleged violator of its intent to review the complaint and of the opportunity for both parties to participate. The notification must include the hearing date for the complaint, which must be scheduled for a date within ninety days after the date on which the safety commission received the complaint, and a statement that the parties may submit written or oral comments at the hearing. The hearing date can be postponed by mutual agreement of the parties to a date that is acceptable to the review committee. The complaining party may voluntarily withdraw the complaint prior to a hearing by the review committee. The safety commission shall promulgate rules governing the conduct of hearings under this section.

(b) The review committee shall determine whether a violation of the law has occurred and, if appropriate, recommend remedial action consistent with the guidance developed pursuant to section 9-1.5-104.4 (2). A recommendation of remedial action that includes a fine requires a unanimous vote of the review committee. The review committee shall not recommend remedial action or a fine against a homeowner, rancher, or farmer, as defined in section 42-20-108.5, unless the review committee finds by clear and convincing evidence that a violation of the law has occurred. Within seven business days after the completion of the hearing, the review committee shall provide to the safety commission in writing a report of its findings of facts, its determination of whether a violation of the law has occurred, and any recommendation of remedial action or penalty.

(7) The safety commission is bound by the review committee's findings of fact and decision, but the safety commission may adjust the review committee's recommendation of remedial action or penalty if an adjustment is supported by at least twelve members of the safety commission. Within ten business days after the safety commission meeting to review the findings and recommendations of the review committee, the safety commission shall provide in writing to the person making the complaint and the alleged violator a summary of the review committee's findings and the safety commission's final determination with respect to any required remedial action or penalty. The decision of the safety commission is final agency action subject to review by the district court pursuant to section 24-4-106.

(8) If a decision by the safety commission involves a fine authorized by section 9-1.5-104.4, the safety commission shall invoice for and collect the fine indicating that a violation of this article 1.5 has been committed by a person or involving the underground facilities of a person. The safety commission may enforce the fine assessed under this article 1.5 as provided in section 24-30-202.4.

(9) (a) If a person does not comply with the safety commission's decision, the safety commission, represented by the attorney general, may enforce this article 1.5 by bringing an action in the Denver district court. In an action brought by the safety commission pursuant to this section, the court may award the safety commission all costs of investigation and trial, including reasonable attorney fees fixed by the court.

(b) Any costs incurred by the safety commission as a result of administering this article 1.5, including legal services, shall be paid from the safety commission fund created in section 9-1.5-104.8. Any costs and fees awarded by the court pursuant to this subsection (9) shall be deposited in the safety commission fund created in section 9-1.5-104.8.

**Source: L. 2018:** Entire section added, (SB 18-167), ch. 256, p. 1568, § 3, effective August 8.

**Editor's note:** Section 12 of chapter 256 (SB 18-167), Session Laws of Colorado 2018, provides that the act adding this section applies to conduct occurring on or after August 8, 2018.

**9-1.5-104.3. Alternative dispute resolution.** The notification association shall create a voluntary alternative dispute resolution program in consultation with its members and all affected parties. The alternative dispute resolution program must be available to all owners or operators, excavators, and other interested parties regarding disputes arising from damage to underground facilities, including any cost or damage incurred by the owner or operator or the excavator as a result of any delay in the excavation project while the underground facility is restored, repaired, or replaced, exclusive of civil penalties set forth in and fines assessed pursuant to section 9-1.5-104.5 or 9-1.5-104.4, that cannot be resolved through consultation and negotiation. The alternative dispute resolution program must include mediation, arbitration, or other appropriate processes of dispute resolution. The issue of liability and amount of damages under Colorado law may be decided by an appointed arbitrator or by the parties in mediation. Nothing in this section changes the basis for civil liability for damages.

**Source: L. 2000:** Entire section added, p. 687, § 3, effective May 23. **L. 2018:** Entire section amended, (SB 18-167), ch. 256, p. 1574, § 4, effective August 8.

**Editor's note:** Section 12 of chapter 256 (SB 18-167), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after August 8, 2018.

**9-1.5-104.4. Penalties - guidance.** (1) A person who violates this article 1.5 is subject to a fine of not more than five thousand dollars for an initial violation and not more than seventy-five thousand dollars for each subsequent violation within a twelve-month period.

(2) In the performance of its duties regarding any complaint, the safety commission is encouraged to consider training, support services, or other remediation measures that will improve the behavior of the party and further the goals of this article 1.5 to ensure the safety of all participants and Coloradans. The safety commission shall develop guidance for the recommendation of remedial actions that are consistent with the following principles:

(a) Guidance shall be developed to help the review committee in determining whether an alleged violation should be classified as a minor, moderate, or major violation;

(b) Alternatives to fines may be considered, especially for a party that the safety commission has not found to be responsible for a violation in the previous twelve months; and

(c) In considering the appropriate remedial action, the safety commission may consider the number of violations relative to the number of notifications received.

(3) The maximum fines for the three different classifications of violations are as follows:

**Number of violations within the previous twelve months**

	<b>One</b>	<b>Two</b>	<b>Three</b>	<b>Four</b>
Minor	\$250	\$500	\$1,000	\$5,000

Moderate	\$1,000	\$2,500	\$5,000	\$25,000
Major	\$5,000	\$25,000	\$50,000	\$75,000

(4) The following are not subject to a fine otherwise authorized pursuant to this section:

(a) With regard to an excavation occurring on a ranch or farm, a rancher or a farmer, as defined in section 42-20-108.5, unless the excavation is for a nonagricultural purpose; and

(b) With regard to a failure to notify the notification association or the affected owner or operator and to damage to an underground facility during excavation, a homeowner, rancher, or farmer, as defined in section 42-20-108.5, working on the homeowner's, rancher's, or farmer's property.

**Source: L. 2018:** Entire section added, (SB 18-167), ch. 256, p. 1568, § 3, effective August 8.

**Editor's note:** Section 12 of chapter 256 (SB 18-167), Session Laws of Colorado 2018, provides that the act adding this section applies to conduct occurring on or after August 8, 2018.

**9-1.5-104.5. Civil penalties - applicability.** (1) (a) Every owner or operator of an underground facility in this state shall join the notification association pursuant to section 9-1.5-105.

(b) Any owner or operator of an underground facility who does not join the notification association in accordance with paragraph (a) of this subsection (1) shall be liable for a civil penalty of two hundred dollars.

(c) (I) If any underground facility located in the service area of an owner or operator is damaged as a result of such owner or operator's failure to comply with paragraph (a) of this subsection (1), the court shall impose upon such owner or operator a civil penalty in the amount of five thousand dollars for the first offense and up to twenty-five thousand dollars for each subsequent offense within a twelve-month period after the first offense. Upon a first offense, the owner or operator shall be required by the court to complete an excavation safety training program with the notification association.

(II) If any owner or operator fails to comply with paragraph (a) of this subsection (1) on more than three separate occasions within a twelve-month period from the date of the first failure to comply with paragraph (a) of this subsection (1), then the civil penalty shall be up to seventy-five thousand dollars.

(d) If any underground facility is damaged as a result of the owner or operator's failure to comply with paragraph (a) of this subsection (1) or failure to use reasonable care in the marking of the damaged underground facility, such owner or operator shall be presumably liable for:

(I) Any cost or damage incurred by the excavator as a result of any delay in the excavation project while the underground facility is restored, repaired, or replaced, together with reasonable costs and expenses of suit, including reasonable attorney fees; and

(II) Any injury or damage to persons or property resulting from the damage to the underground facility. Any such owner or operator shall also indemnify and defend the affected excavator against any and all claims or actions, if any, for personal injury, death, property damage, or service interruption resulting from the damage to the underground facility.

(2) (a) Any person who intends to excavate shall notify the notification association pursuant to section 9-1.5-103 prior to commencing any excavation activity. For purposes of this

paragraph (a), excavation shall not include an excavation by a rancher or a farmer, as defined in section 42-20-108.5, C.R.S., occurring on a ranch or farm unless such excavation is for a nonagricultural purpose.

(b) Any person, other than a homeowner, rancher, or farmer, as defined in section 42-20-108.5, C.R.S., working on such homeowner's, rancher's, or farmer's property, who fails to notify the notification association or the affected owner or operator pursuant to paragraph (a) of this subsection (2) shall be liable for a civil penalty in the amount of two hundred dollars.

(c) (I) If any person, other than a homeowner, rancher, or farmer, as defined in section 42-20-108.5, C.R.S., working on such homeowner's, rancher's, or farmer's property, fails to comply with paragraph (a) of this subsection (2) and damages an underground facility during excavation, such person shall be liable for a civil penalty in the amount of five thousand dollars for the first offense and up to twenty-five thousand dollars for each subsequent offense within a twelve-month period after the first offense. Upon a first offense, such person shall be required to complete an excavation safety training program with the notification association.

(II) If any person fails to comply with paragraph (a) of this subsection (2) on more than three separate occasions within a twelve-month period from the date of the first failure to comply with paragraph (a) of this subsection (2), then the civil penalty shall be up to seventy-five thousand dollars.

(d) If any person, other than a homeowner, rancher, or farmer, as defined in section 42-20-108.5, C.R.S., working on such homeowner's, rancher's, or farmer's property, fails to comply with paragraph (a) of this subsection (2) or fails to exercise reasonable care in excavating or performing routine maintenance and damages an underground facility during such excavation or routine maintenance, such person shall be presumably liable for:

(I) Any cost or damage incurred by the owner or operator in restoring, repairing, or replacing its damaged underground facility, together with reasonable costs and expenses of suit, including reasonable attorney fees; and

(II) Any injury or damage to persons or property resulting from the damage to the underground facility. Any such person shall also indemnify and defend the affected owner or operator against any and all claims or actions, if any, for personal injury, death, property damage, or service interruption resulting from the damage to the underground facility.

(e) Paragraph (d) of this subsection (2) shall not apply to a person who commences excavation affecting an underground facility if the owner or operator of the underground facility has failed to comply with paragraph (a) of subsection (1) of this section or has failed to use reasonable care in the marking of the affected underground facility.

(3) (a) An action to recover a civil penalty under this section may be brought by an owner or operator, excavator, aggrieved party, district attorney, or the attorney general. Venue for such an action shall be proper in the district court for the county in which the owner or operator, excavator, or aggrieved party resides or maintains a principal place of business in this state or in the county in which the conduct giving rise to a civil penalty occurred.

(b) Any civil penalty imposed pursuant to this section, including reasonable attorney fees, shall be paid to the prevailing party.

(c) The penalties and remedies provided in this article 1.5 are in addition to any other remedy at law or equity available to an excavator or to the owner or operator of a damaged underground facility, and sections 9-1.5-104.2 and 9-1.5-104.4, regarding the safety

commission's enforcement authority, do not limit or restrict any other remedy at law or equity available to an excavator or to the owner or operator of a damaged underground facility.

(d) No civil penalty shall be imposed under this section against an excavator or owner or operator who violates any of the provisions of this section if the violation occurred while the excavator or owner or operator was responding to a service outage or other emergency; except that such penalty shall be imposed if such violation was willful or malicious.

(4) Nothing in this article shall be construed to impose an indemnification obligation on any public entity or to alter the liability of public entities as provided in article 10 of title 24, C.R.S.

(5) In determining the liability for or the amount of any damages or civil penalty pursuant to this article, a court or arbitrator shall consider the nature, circumstances, and gravity of the alleged violation and the alleged violator's degree of culpability, history of prior violations, and level of cooperation with the requirements of this article.

**Source:** **L. 83:** Entire section added, p. 440, § 1, effective July 1. **L. 93:** (1) and (3) amended, p. 502, § 1, effective September 1; (2) amended, p. 502, § 1, effective January 1, 1994. **L. 2000:** Entire section R&RE, p. 688, § 4, effective May 23. **L. 2009:** IP(2)(d) amended, (HB 09-1092), ch. 38, p. 152, § 4, effective August 5. **L. 2018:** (3)(c) amended, (SB 18-167), ch. 256, p. 1574, § 5, effective August 8.

**Editor's note:** Section 12 of chapter 256 (SB 18-167), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after August 8, 2018.

**9-1.5-104.7. Damage prevention fund.** (1) The damage prevention fund, referred to in this section as the "fund", is hereby created in the state treasury. The fund consists of:

- (a) All receipts from money directed by law to be deposited to the fund;
- (b) All fines collected pursuant to section 9-1.5-104.4; and
- (c) Any other money that the general assembly may appropriate or transfer to the fund.

(2) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

(3) Only the safety commission may authorize expenditures from the fund. Subject to annual appropriation by the general assembly, the safety commission may use money deposited in the fund only to:

(a) Develop and disseminate educational programming designed to improve worker and public safety relating to excavation and underground facilities; and

(b) Provide grants to persons who have developed educational programming that the notification association and the safety commission deem appropriate for improving worker and public safety relating to excavation and underground facilities.

**Source:** **L. 2018:** Entire section added, (SB 18-167), ch. 256, p. 1568, § 3, effective August 8.

**Editor's note:** Section 12 of chapter 256 (SB 18-167), Session Laws of Colorado 2018, provides that the act adding this section applies to conduct occurring on or after August 8, 2018.

**9-1.5-104.8. Safety commission fund.** (1) The safety commission fund, referred to in this section as the "fund", is hereby created in the state treasury. The fund consists of:

(a) All receipts from money directed by law to be deposited to the fund, including costs and fees awarded by a court pursuant to section 9-1.5-104.2 (9)(b); and

(b) Any other money that the general assembly may appropriate or transfer to the fund.

(2) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

(3) Only the safety commission may authorize expenditures from the fund. Subject to annual appropriation by the general assembly, the safety commission may use money deposited in the fund only to pay for its expenses in administering this article 1.5.

**Source: L. 2018:** Entire section added, (SB 18-167), ch. 256, p. 1568, § 3, effective August 8.

**Editor's note:** Section 12 of chapter 256 (SB 18-167), Session Laws of Colorado 2018, provides that the act adding this section applies to conduct occurring on or after August 8, 2018.

**9-1.5-105. Notification association - structure and funding requirements - duties of owners and operators - report - repeal.** (1) There is hereby created a nonprofit corporation in the state of Colorado, referred to in this article 1.5 as the "notification association", which consists of all owners or operators of underground facilities. All owners and operators shall join the notification association and shall participate in a statewide program that utilizes a single, toll-free telephone number 811 that excavators can use to notify the notification association of pending excavation plans.

(2) All underground facility owners and operators are members of the notification association. The notification association shall provide members that were not tier one members on or before August 8, 2018, with electronic notifications beginning on January 1, 2019, at no cost for twenty-four months. On or before January 1, 2021, all owners and operators become full members of the notification association and are entitled to receive full service benefits as part of membership as specified in this article 1.5. Nothing precludes a tier two member from becoming a tier one member with the two-year waiver of no-cost notifications at any time before January 1, 2021. Until December 31, 2020, membership is organized as follows:

(a) "Tier one" members who shall be full members of the notification association and shall receive full service benefits as part of such membership as specified in this article. Any owner or operator required to be a member of the association who was a member on February 1, 1993, shall be designated a tier one member without further action by such member.

(b) (I) "Tier two" members who shall be limited members and shall receive limited services as a part of such membership as specified in this article. Tier two members shall pay a one-time membership fee of twenty-five dollars to the notification association to partially defray the costs incurred by the association in organizing pursuant to this article. The notification association shall not assess any charges, costs, or fees to any tier two member other than the one-time membership fee.

(II) All tier two members shall provide the association with accurate information regarding the boundaries of such member's service area, the type of underground facility that may be encountered within such 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.

(III) Not later than January 1, 1994, 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 person specified in subparagraph (II) of this paragraph (b).

(IV) The following owners or operators of underground facilities who are not designated as tier one members pursuant to paragraph (a) of this subsection (2) shall be designated as tier two members:

- (A) Electric cooperative associations;
- (B) Special districts organized under title 32, C.R.S.;
- (C) Cable television operators;
- (D) Municipalities and counties; and
- (E) Telecommunications local exchange providers with fewer than fifty thousand access lines.

(2.1) (a) Subsection (2) of this section and this subsection (2.1) are repealed, effective January 1, 2021.

(b) On or before March 1, 2020, the notification association shall provide a report to the senate transportation committee and the house of representatives transportation and energy committee, or their successor committees, about its efforts to prepare for tier two members transitioning to tier one membership. The report must include, but need not be limited to, the steps that have been implemented to ensure efficiencies in notification procedures and operations, a cost analysis of the transition, and information regarding any new technological advances adopted to improve efficiencies. In preparing the report, the notification association shall solicit input from members.

(2.3) Repealed.

(2.4) Effective January 1, 2021, all underground facility owners and operators are members of the notification association. All members are full members of the notification association and are entitled to receive full service benefits as part of membership as specified in this article 1.5.

(2.5) The notification association may accept any organization, person, or entity which has an interest in the purposes and functions of the association as a member whether specifically enumerated in this article or not. Any such member shall comply with the bylaws of the association.

(2.6) (a) The notification association shall prepare annual reports on its activities, as follows:

- (I) A statistical summary of the information reported to it pursuant to section 9-1.5-103 (7)(b); and
- (II) An annual, independent financial audit of its operations.

(b) The notification association shall provide a copy of both reports created under paragraph (a) of this subsection (2.6) to its members and shall provide the report created under subparagraph (I) of paragraph (a) of this subsection (2.6) to the public utilities commission of the state of Colorado.

(3) (a) (I) Except as provided in subsection (2) of this section, each member of the notification association shall provide all of the locations of any underground facilities that the member owns or operates to the notification association, and the association shall maintain the information on file for use by excavators.

(II) This subsection (3)(a) is repealed, effective January 1, 2021.

(b) Effective January 1, 2021, each member of the notification association shall provide general information regarding all of the locations of any underground facilities that the member owns or operates, for excavation notification purposes only, and the member's contact information, both of which shall be updated annually, to the notification association, and the association shall maintain the information on file in a manner that ensures the confidentiality and security of the information.

(c) Information regarding the location of underground facilities provided to the notification association by an owner or operator or to the safety commission by the notification association is exempt from the "Colorado Open Records Act", part 2 of article 72 of title 24, pursuant to section 24-72-204 (2)(a)(VIII)(A) regarding specialized details of critical infrastructure.

(4) (a) (I) The notification association is governed by a board of directors, which must be representative of the membership of the association.

(II) (A) Until December 31, 2020, the board must have at least one director that is a tier two member.

(B) This subsection (4)(a)(II) is repealed, effective January 1, 2021.

(b) The board of directors shall be elected by the membership of the association pursuant to the bylaws of the association.

(5) The notification association shall be incorporated and operated as a nonprofit corporation pursuant to the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S.

(6) This section does not apply to:

(a) Any owner or occupant of real property under which underground facilities are buried if the facilities are used solely to furnish service or commodities to the real property and no part of the facilities is located in a public street, county road, alley, or right-of-way dedicated to public use; or

(b) Any homeowner.

**Source:** **L. 81:** Entire article added, p. 522, § 1, effective October 1. **L. 93:** Entire article amended, p. 503, § 1, effective September 1. **L. 97:** (5) amended, p. 761, § 27, effective July 1, 1998. **L. 2000:** IP(2) amended and (2.6) R&RE, pp. 690, 691, §§ 5, 6, effective May 23. **L. 2018:** (1), IP(2), (3), (4), and (6) amended, (2.1) and (2.4) added, and (2.3) repealed, (SB 18-167), ch. 256, p. 1575, § 6, effective August 8.

**Editor's note:** Section 12 of chapter 256 (SB 18-167), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after August 8, 2018.

**9-1.5-106. Notice requirements - repeal.** (1) The notification association created in section 9-1.5-105 shall:

(a) Receive and record notifications from excavators concerning intended excavation activities including sites, dates, and the nature of any intended excavation;

(b) Maintain a record of each notice of intent to excavate for a minimum of three years; and

(c) File the notification received regarding any proposed excavation site and the notification provided regarding such excavation site, including the date and time of each such notification, by reference number.

(2) The notification association shall establish and maintain a damage prevention safety program and shall conduct periodic public awareness campaigns.

(3) (a) (I) The notification association shall provide prompt notice of any proposed excavation to each affected tier one member that has any underground facilities in the area of the proposed excavation site. The notification association shall also provide the excavator with the name and telephone number of each tier two member that has any underground facilities in the area of the proposed excavation.

(II) This subsection (3)(a) is repealed, effective January 1, 2021.

(b) Effective January 1, 2021, the notification association shall provide prompt notice of any proposed excavation to each affected member that has any underground facilities in the area of the proposed excavation site.

**Source: L. 93:** Entire article amended, p. 505, § 1, effective September 1. **L. 2018:** (3) amended, (SB 18-167), ch. 256, p. 1577, § 7, effective August 8.

**Editor's note:** Section 12 of chapter 256 (SB 18-167), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after August 8, 2018.

**9-1.5-107. Notice of removal of underground facilities.** At least ten days before beginning an excavation to remove an underground facility that is a gas transmission pipeline that has been abandoned or is unused and is not located in a public road, street, alley, or right-of-way dedicated to public use, the excavator shall notify each owner of record and occupant of the real property where such underground facility is located. The notice shall state the commencement, extent, and duration of the excavation in addition to the information required by section 9-1.5-103 (3)(c) and shall be served in the same manner as personal service under the Colorado rules of civil procedure; except that, if such personal service cannot be made through the use of due diligence, notice may be served by mail to the owner's or occupant's last-known address. If a valid mailing address is not available through the use of due diligence, notice may be made by publication in a newspaper published in the county in which the property is located. For purposes of this section, an underground facility is not considered abandoned or unused if it is in operation for its intended purpose or is being actively maintained with reasonable anticipation of a future use.

**Source: L. 2007:** Entire section added, p. 162, § 1, effective August 3.

**9-1.5-108. Repeal - sunset review.** (1) This section and sections 9-1.5-104.2, 9-1.5-104.4, 9-1.5-104.7, and 9-1.5-104.8 are repealed, effective September 1, 2028.

(2) Before the repeal, the functions of the underground damage prevention safety commission related to underground facilities specified in sections 9-1.5-104.2, 9-1.5-104.4, 9-1.5-104.7, and 9-1.5-104.8 are scheduled for review in accordance with section 24-34-104.

**Source: L. 2018:** Entire section added, (SB 18-167), ch. 256, p. 1577, § 8, effective August 8.

**Editor's note:** Section 12 of chapter 256 (SB 18-167), Session Laws of Colorado 2018, provides that the act adding this section applies to conduct occurring on or after August 8, 2018.