



THE MILLE LACS BAND OF
OJIBWE INDIANS

Executive Branch of Tribal Government

COMMISSIONER'S ORDER 86-00

A COMMISSIONER'S ORDER TO ADOPT NOTICE REQUIREMENTS FOR CERTAIN ACTIVITIES WITHIN THE JURISDICTION OF THE MILLE LACS RESERVATION IN ORDER TO PROMOTE THE SAFETY OF ALL PERSONS AND THE INTEGRITY OF UNDERGROUND FACILITIES.

WHEREAS, Pursuant to Ordinance 20-97, Sec. 4 (a), the Commissioner of Community Development has the power to provide an effective system of administration to plan, direct and evaluate the functions of Community Development, Public Works, Facilities and Transportation for the Mille Lacs Band;

WHEREAS, Pursuant to Ordinance 20-97, Sec. 4 (k), the Commissioner of Community Development has the power to inspect and ensure the safety of all buildings and facilities within the jurisdiction of the Mille Lacs Band of Chippewa Indians;

WHEREAS, Pursuant to 4 MLBSA § 7 (h), the Commissioner of Community Development has the authority to issue commissioner's orders on any subject matter in his jurisdiction pursuant to the authority conferred by Band Statute;

WHEREAS, Pursuant to 4 MLBSA § 7 (i), the Commissioner of Community Development has the authority to take measures necessary to prevent any action which threatens the well being of programs within his jurisdiction by issuance of a formal commissioner's order;

WHEREAS, Pursuant to 4 MLBSA § 7 (j), the Commissioner of Community Development has the authority to exercise any and all authority conferred pursuant to the provision of any other Band Statute; and

WHEREAS, in order to protect all persons within the jurisdiction of the Mille Lacs Reservation, a need has been identified to require persons who perform certain activities on the reservation which may affect underground facilities to provide notice of such activities to Gopher State One Call.

NOW THEREFORE IT IS HEREBY ORDERED, by the authority vested in me by the Mille Lacs Band of Ojibwe, I, Lester Morris, Commissioner of Community Development for the Mille Lacs Band of Ojibwe, hereby adopt the attached regulations.

IT IS FURTHER ORDERED, that Commissioner's Order 65-99 is hereby repealed.

DATED at Vineland, Minnesota this Eighth day of February in the year two thousand.

DISTRICT I

HCR 67, Box 194 • Onamia, MN 56359
(320) 532-4181 • Fax (320) 532-4209

DISTRICT II

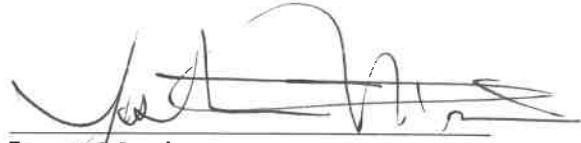
Route 2 • Box 58 • McGregor, MN 55760
(218) 768-3311 • Fax (218) 768-3903

DISTRICT III

Route 2 • Box 233-N • Sandstone, MN 55072
(320) 384-6240 • Fax (320) 384-6190

EFFECTIVE: IMMEDIATELY.

EXPIRATION: NONE.



Lester Morris
Commissioner of Community Development

APPROVED AS TO FORM,
EXECUTION AND NUMBERING



Solicitor General

OFFICIAL SEAL OF THE BAND

§ 1 Purpose.

To prevent underground utility damage from excavation activities that could endanger life, health or property.

§ 2 Definitions. For purposes of this Order:

a. "Boundary survey" means a survey made to establish or to reestablish a boundary line on the ground or to obtain data for preparing a map or plat showing boundary lines.

b. "Damage" means:

1. The substantial weakening of structural or lateral support of an underground facility;
2. Penetration, impairment or destruction of any underground protective coating, housing or other protective device; or
3. Impact with or the partial or complete severance of an underground facility to the extent that the facility operator determines that repairs are required.

c. "Emergency" means a condition that poses a clear and immediate danger to life or health or significant loss of property.

d. "Emergency responder" means a fire department or company, a law enforcement official or office, an ambulance or other emergency rescue service.

e. "Excavation" means an activity that moves, removes or otherwise disturbs the soil by use of a motor, engine, hydraulic or pneumatically powered tool or machine-powered equipment of any kind or by explosives. Excavation does not include:

1. The extraction of minerals;
2. The opening of a grave in a cemetery;
3. Normal maintenance of roads and streets if the maintenance does not change the original grade and does not involve the road ditch;
4. Plowing, cultivating, planting, harvesting and similar operations in connection with growing crops, trees and shrubs, unless any of these activities disturbs the soil to a depth of 18 inches or more;
5. Gardening unless it disturbs the soil to a depth of 12 inches or more; or
6. Planting of windbreaks, shelterbelts and tree plantations, unless any of these activities disturbs the soil to a depth of 18 inches or more.

- f. “Excavator” means a person who conducts excavation.
- g. “Land surveyor” means a person licensed to practice land surveying.
- h. “Notification center” means Gopher State One Call Center.
- i. “Operator” means a person who owns or operates an underground facility. A person is not considered an operator solely because the person is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on that property, unless the person is the Mille Lacs Band or a Band Department.
- j. “Person” means the Mille Lacs Band, a Band Department, an individual, corporation, partnership, association or other business or public entity or a trustee, receiver, assignee or personal representative of any of the same.
- k. “Underground facility” means an underground line, facility, system and its appurtenances used to produce, store, convey, transmit or distribute communications, data, electricity, power, heat, gas, oil, petroleum products, water including storm water, steam, wastewater and other similar substances.

§ 3.0 Operator Participation.

An operator shall participate in and share in the costs of the Gopher State One Call Center.

§ 4.0 Excavation.

§ 4.1 Notice required. Except in an emergency, an excavator shall and a land surveyor may contact the notification center and provide an excavation or location notice at least 48 hours before beginning any excavation or boundary survey, excluding Saturdays, Sundays and holidays. An excavation or boundary survey begins, for purposes of this requirement, the first time excavation or a boundary survey occurs in an area that was not previously identified by the excavator or land surveyor in an excavation or boundary survey notice.

§ 4.2 Contents of Excavation Notice. The excavation notice may be oral or written, and must contain the following information:

- a. The name of the individual providing the excavation notice;
- b. The precise location of the proposed area of excavation;
- c. The name, address and telephone number of the excavator or excavator's company;
- d. The excavator's field telephone number, if one is available;

- e. The type and the extent of the proposed excavation;
- f. Whether or not the discharge of explosives is anticipated;
- g. The date and time when excavation is to commence; and
- h. The estimated duration of the excavation.

§ 4.3 Contents of the Boundary Survey Notice. The boundary survey notice may be oral or written, and must contain the following information:

- a. The name of the individual providing the boundary survey;
- b. The precise location of the proposed area of the boundary survey;
- c. The name, address and telephone number of the land surveyor or the land surveyor's company;
- d. The land surveyor's field telephone number, if available;
- e. The extent of the proposed boundary survey; and
- f. The date and time when the boundary survey is to commence.

§ 4.4 Plans for excavation.

a. Any person, prior to soliciting bids or entering into a contract for excavation, shall provide a proposed excavation request 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 may indicate any portions of the information which are proprietary and may require the person to provide appropriate confidentiality protection. The information obtained from affected operators must be submitted with the final drawing used for the bid or contract. This information must be obtained not more than 90 days before completion of the final drawing used for the bid or contract.

- b. This section 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. The notification center excavation or location notice will be void six months from the issue date on the notice. A new notice will need to be issued to continue excavation.

§ 5.0 Precautions to avoid damage. An excavator shall:

a. Plan the excavation to avoid damage to and minimize interference with underground facilities in and near the construction area, using white markings for proposed excavations where practical;

b. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility;

c. Provide support for underground facilities in and near the construction area, including during backfill operations, to protect the facilities; and

d. Conduct the excavation in a careful and prudent manner.

§ 6.0 Damage to underground facility.

§ 6.1 Notice; repair.

a. If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. When the operator receives a damage notice, the operator shall promptly dispatch personnel to the damage area to investigate. If the damage endangers life, health or property, the excavator responsible for the work shall take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and taken charge of the damaged area.

b. An excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.

§ 6.2 Cost reimbursement.

a. If an excavator damages an underground facility, the excavator shall reimburse the operator for the cost of necessary repairs, and, for a pipeline, the cost of the product that was being carried in the pipeline and was lost as a direct result of the damage.

b. Reimbursement is not required if the damage to the underground facility was caused by the sole negligence of the operator or the operator failed to comply with section § 4.6.

§ 4.5 Locating underground facility; operator.

a. An operator shall, within 48 hours after receiving an excavation notice from the notification center, excluding Saturdays, Sundays and holidays, unless otherwise agreed to between the excavator and operator, locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator and provide readily available information regarding the operator's abandoned and out-of-service underground facilities as shown on maps, drawings, diagrams or other records used in the operator's normal course of business, without cost to the excavator. The excavator shall determine the precise location of the underground facility, without damage, before excavating within two feet of the marked location of the underground facility.

b. An operator shall, within 96 hours after receiving a location notice for boundary survey from the notification center, excluding Saturdays, Sundays and holidays, unless otherwise agreed to between the land surveyor and operator, locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator, without cost to the land surveyor.

c. For the purpose of this section, the approximate horizontal location of the underground facilities is a strip of land two feet on either side of the underground facilities.

d. Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American Public Works Association.

e. If the operator cannot complete marking of the excavation or boundary survey area before the excavation or boundary survey commencement time stated in the excavation or location notice, the operator shall promptly contact the excavator or land surveyor.

f. Operators shall maintain maps, drawings, diagrams or other records of any underground facility abandoned or out-of-service.

g. An operator providing information pursuant to this section is not responsible to any person, for any costs, claims or damages for information provided in good faith regarding abandoned or out-of-service underground facilities.

§ 4.6 Locating underground facility; excavator or land surveyor.

a. The excavator or land surveyor shall determine the precise location of the underground facility, without damage, before excavating within two feet on either side of the marked location of the underground facility.

b. If the excavator or land surveyor postpones the excavation or boundary survey commencement time stated in the excavation or location notice by more than 96 hours, or cancels the excavation or boundary survey, the excavator or land surveyor shall notify the notification center.