

ISSUES PER ESHB 1109 (in boldface type below)

SUMMARY OF MOST RECENT PROPOSED AMENDMENTS TO RCW CHAPTER 19.122 THAT CAN BE IDENTIFIED TO EACH ISSUE; AND STAKEHOLDER COMMENTS CONCERNING THE PROPOSED AMENDMENTS

How facility operators and excavators schedule meeting times and places

Amend RCW 19.122.030 adding (2)(b); see sec. 2 of 2979.

Stakeholders commenting or otherwise identified	Section 2 re RCW 19.122.030 and 2011 c 263 s 4
Don Evans –large projects lead	Sec. 2 (1)(a) ... (b) ... (2) (a) ...
Jon Cornelius	(b) (b) If an excavator intends to work at multiple sites or at a large project, the excavator must ((take reasonable steps to confer)) include on
GJ of Seattle Public Utilities	the locate notice a date, no sooner than the second business day, time, and place for a meeting with facility operators to make arrangements that enable ((them)) the facility operators to locate underground facilities
Clark McIsaac, SnoPud	reasonably in advance of the start of excavation for each phase of the work. The meeting date is the date of notice for the purpose of compliance with this subsection. In the event that the facility operator does not attend the required meeting, it is the facility operator's responsibility to contact the excavator.
	Proposed change: (b) If an excavator intends to work at multiple sites or at a large project, the excavator must ((take reasonable steps to confer)) include on the locate notice a date, no sooner than the second business day, time, and place for a meeting with facility operators or, including, conference call with facility operators to make arrangements that enable ((them)) the facility operators to locate underground facilities reasonably in advance of the start of excavation for each phase of the work. The meeting, including conference call date is the date of notice for the purpose of compliance with this subsection. In the event that the facility operator does not attend participate in the required meeting, it is the facility operator's responsibility to contact the excavator and the facility operator desires to propose arrangements for locating reasonably in advance of the start of excavation for each phase of the work, it is the facility operator's responsibility to contact the excavator.

Commented [w1]: Large Project is in definition 15: "Large project" means a project that exceeds seven hundred linear feet.

Bellevue/Everett recommends limiting this to 500 linear feet.

Commented [DM2]: These proposed changes are difficult to follow. The final sentence is particularly challenging.

Commented [DM3]: GJ of SPU commented "This does not make sense."

Commented [w4R3]: I'm not sure if GJ comment is general or specific to certain language.

Commented [DM5]: SnoPud (Clark McIsaac) commented: "The language regarding "...excavator must include on the locate notice a date, no sooner than the second business day, time, and place for a meeting with facility operators to make arrangements..." appears to not allow for facility operator input in scheduling the meeting nor limit the meeting to normal business hours. We suggest considering language that allows for coordination of a meeting during normal business hours between the excavator and the operator." See Dig Law Comments document.

Commented [JC6]: As proposed by the subcommittee working on this language

Commented [DM7]: DENNIS MOSS: This does not seem to follow from what precedes it. I frankly find it impossible to understand exactly the intent here.

BOTTOM LINE: There needs to be a protocol for initial and continuing communication that includes excavator, "call before you dig," and facility owners when project includes multiple sites (more than one or some other criterion/criteria) and for large projects (defined how?)

New requirements for marking locatable underground facilities

Definitions 16 and 28, RCW 19.122.020; amend RCW 19.122.030 (3)(a)

	<p>(16) "Locatable underground facility" means an underground facility which can be marked with reasonable accuracy.</p> <p>Proposed changes: 16) "Locatable underground facility" means an underground facility which can be marked with reasonable accuracy. The basis for such marks includes, but is not limited to common, accessible, and proven detection methods such as trace wires, and accurate documentation, such as ground positioning system coordinates and as-built record drawings.</p>
Kathleen Collins, Lobbyist for PacifiCorp	<p>Revise definition no. 16 (as proposed by subcommittee that addressed issues with the original language; also as proposed per October meeting and in 9/28/18 draft of proposed revisions) to read (with DJM edits): (16) "Locatable underground facility" means an underground facility which that can be marked with reasonable accuracy. The basis bases for such marks include, but is-are not limited to: (1) common, accessible, and proven detection methods such as trace wire; (2) accurate documentation, such as ground positioning system coordinates; and (3) as-built record drawings.</p>
GJ, SPU	<p>NOTE: SPU proposed version reads:</p> <p>16) "Locatable underground facility" means an underground facility which can be marked with reasonable accuracy. The basis for such marks includes, but is not limited to common, accessible, and proven above-ground metal detection methods for subsurface metal used to locate such as trace wires and metallic pipes, and accurate documentation, such as ground positioning system coordinates and as-built record drawings. <u>If, in the judgment of a Facility operator as-built or other record drawings and documentation accessible to the Facility operator are insufficiently reliable to allow the operator to mark an underground facility with reasonable accuracy and the facility is not otherwise "locatable," the facility shall be an "unlocatable underground facility" and so designated.</u></p>
	<p>(28) "Unlocatable underground facility" means, subject to the provisions of RCW 19.122.030, an underground facility that cannot be marked with reasonable accuracy using available information to designate the location of an underground facility. "Unlocatable underground facility" includes, but is not limited to, service laterals, storm drains, and nonconductive and nonmetallic underground facilities that do not contain trace wires.</p>

Commented [JC8]: As proposed by the subcommittee who addressed the issues with the original language.

Commented [w9]: Slight difference as per KC, next row down

Commented [w10R9]:

Commented [DM11]: Per Kathleen Collins, Lobbyist in "Dig Law Comments" document: PacifiCorp is concerned that the proposed new language in Section 1(16) and (28), and New Section 7, "...such as ground positioning system coordinates and as-built record drawings..." could allow utility owners to locate via GPS and/or "as built record drawings" alone, which is not viable due to the potential inaccuracy of these locating methods. As a facility owner we cannot allow our facilities to be located by GPS or original stand-alone drawings only. We want to make sure that these methods can only be used in addition to other, more precise, methods.

Commented [w12]: See preceding comment by DM.

Commented [w13]: See wutcuser comment immediately above

Commented [DM14]: Michelle Detwiler 11/05/18 (PacifiCorp Comment) We are concerned this statement could allow utility owners to locate via GPS and/or as built drawings alone which is not viable due to the potential inaccuracy of these methods. As a facility owner we cannot allow our facilities to be located by GPS or original stand-alone drawings only. We want to make sure these methods can be used in addition to other, more precise, methods.

Commented [w15]: As of January 1, 2020, all newly constructed and replacement underground facilities shall be installed so that they are locatable by a common, accessible, and proven method at the time they enter service.

Commented [w16]: Clarification is needed. Facility operators should not be required to insert sondes or other devices into pipes to locate them. Alternatively, if that is the intent, facility operators should be compensated for this expense.

Commented [w17]: Per GJ comment for SPU As-builts and other documents are often prepared by third-parties, veriparticularly so with side sewers. Old records do not always reflect updated depths and/or changes, nor do they allow for marking within plus or minus two feet. Indeed, record drawings ...

	<p>Proposed changes: (28) "Unlocatable underground facility" means, subject to the provisions of RCW 19.122.030, an underground facility that cannot be marked with reasonable accuracy using available information to designate the location of an underground facility. "Unlocatable underground facility" includes, but is not limited to, service laterals, storm drains, and nonconductive and nonmetallic underground facilities that do not contain trace wires are not detectable by common, accessible, and proven detection methods such as trace wires, or described by accurate documentation, such as ground positioning system coordinates and as-built record drawings.</p>
	<p>RCW 19.122.030 (3) Upon receipt of the notice provided for in subsection (1) of this section, a facility operator must, with respect to:</p> <p>(a) The facility operator's locatable underground facilities, provide the excavator with reasonably accurate information by marking their location. <u>All marks shall indicate the name or initials of the facility operator, and when known, the best available description including width, if greater than two inches, and the quantity.</u></p>

Commented [w18]: Michelle Detwiler
11/05/2018
(PacifiCorp Comment) We are concerned this statement could allow utility owners to locate via GPS and/or as built drawings alone which is not viable due to the potential inaccuracy of these methods. As a facility owner we cannot allow our facilities to be located by GPS or original stand-alone drawings only. We want to make sure these methods can be used in addition to other, more precise, methods.

Commented [JC19]: Language changes proposed by the subcommittee working on the language

Commented [w20]: Per GJ at SPU: This would require extensive additional marking and create visual clutter. Excavators should not be excavating based on marks alone, and the basis for this change is unclear.

Commented [w21]: DENNIS MOSS: AN OPTION IS TO HAVE THE FACILITY OWNER mark discrete facilities with an alpha-numeric code and REPORT BACK TO THE ONE NUMBER LOCATER SERVICE PROVIDING the best available description OF EACH FACILITY MARKED with an alpha-numeric code including width, if greater than two inches, and the quantity

Commented [KM22]: Bellevue has concerns that large amounts of paint applied with every locate may cause tension with the public. We do support additional marking if special circumstances exist however: 'Unlocatable 12" AC' etc.

A definition of "noninvasive methods"

New definition 30 per 2979. Amend RCW 19.122.040 (2)(a). Add a new section to chapter 19.122 RCW to read as follows: As of January 1, 2020, all newly constructed and replacement underground facilities shall be installed so that they are locatable by a common, accessible, and proven method at the time they enter service.

	<p>Proposed new section: As of January 1, 2020 2021, all newly constructed and replacement underground facilities shall be installed so that at the time they enter service they are locatable by a common, accessible, and proven methods at the time they enter service such as trace wires, or by accurate documentation, such as ground positioning system coordinates and as-built record drawings.</p>
<p>Jon Cornelius, WA DOT-lead Non-invasive digging Don Robertson, Safety and Risk Manager, Merlino Constr. Co. Charlie Gadzik, PSE Jason Lewis, UTC Todd Knittel</p>	<p>Definition no. 30 as proposed per October meeting and in 9/28/18 draft of proposed revisions) to read: (30) "Noninvasive methods" means methods that do not damage the facility, and may include: <u>(a) Hand digging when practical soft digging, and vacuum excavation methods or</u> <u>(b) With the approval of the facility owner or operator:</u> <u>(i) Pneumatic hand tools or other mechanical methods; and</u> <u>(ii) Any vacuum excavation or evacuation method</u> <u>(iii) Other technical methods that may be developed.</u></p>
<p>These are included here for information purpose so all new defined terms are in one place</p>	<p><u>(30) "Noninvasive methods" means methods that do not damage the facility, and may include:</u> <u>(a) Hand digging when practical, soft digging, and vacuum excavation methods; or</u> <u>(b) With the approval of the facility owner or operator:</u> <u>(i) Pneumatic hand tools or other mechanical methods; and</u> <u>(ii) Other technical methods that may be developed.</u> <u>(31) "Positive response" means that a facility operator provides electronic notification to the one-number locator service in response to a locate request.</u> <u>(32) "Replacement" means the portion of a new underground facility that is installed, by open cut or trenchless methods, between connection points, such as structures in replacement of an existing underground facility. Replacement" does not include a spot repair.</u></p>

Commented [w23]:

Commented [w24R23]: DENNIS MOSS: Should this be "and"?

Commented [DM25]: "Don Robertson | Safety and Risk Manager, Merlino Constr. Co., in Dig Law Comments Document:" Objects to the addition of definition #30 and #31. Number 30 constrains the excavator and limits options regardless of the situation. Number 31 does not supply any details for what you do next if a facility owner who does not provide a response.

DENNIS MOSS: How is the excavator "constrained" and how are "options limited?" (b) seems to leave things pretty wide open.

Commented [JC26]: Changes as recommended by Todd Knittel based on group discussion

Commented [DM27]: Per Cornelius comment 10/11/18, deleted: "~~soft digging, and vacuum excavation methods.~~" Charlie Gadzik also deleted and added (33), below. See Comment 6 proposing to delete (33).

Commented [DM28]: Per Jason Lewis 9/4/18: When pressurized water wands are used, the maximum water pressure to be used at any time with a straight tip nozzle during excavation below a depth of 18" shall be reduced to a maximum of 1,500psi.
- Taken from the "VACUUM EXCAVATION BEST PRACTICE & GUIDELINE" by the Gas Technology Institute.

Commented [DM29]: Per Cornelius comment 10/11/18, deleted: "~~Other technical methods that may be developed.~~"

Commented [LJ(30): When pressurized water wands are used, the maximum water pressure to be used at any time with a straight tip nozzle during excavation below a depth of 18" shall be reduced to a maximum of 1,500psi.
- Taken from the "VACUUM EXCAVATION BEST PRACTICE & GUIDELINE" by the Gas Technology Institute.

	Definition no. (33) "Soft digging" means removal of soils that have been <u>preloosened by noninvasive methods.</u>

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Commented [JC31]: Suggest we remove since the term "soft digging" is no longer included in the definition of "Noninvasive methods".

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The procedures that must take place when an excavator discovers (and may or may not damage) an underground facility

Amend RCW 19.122.030 (10). Amend RCW 19.122.035(4). Amend RCW 19.122.050(1)

	<p>(10) If an excavator discovers underground facilities that are not identified, the excavator must cease excavating in the vicinity of the underground facilities and immediately notify the facility operator ((or)) <u>and</u> a one-number locator service. If an excavator discovers identified but unlocatable underground facilities, the excavator must notify the facility operator <u>and the one-number locator service</u>. Upon notification by a one-number locator service or an excavator, a facility operator must ((allow for)) <u>map or record and mark the location of the uncovered portion of an underground facility identified by the excavator, ((and may)) or accept verifiable location information from the excavator for ((marking of the underground facility)) future one-number locate requests. If an excavator discovers and damages an identified but unlocatable facility, the excavator shall proceed pursuant to RCW 19.122.050</u></p>
	<p>... (4) No damaged pipeline may be buried until it is <u>inspected by the facility operator</u>, repaired, or relocated. The pipeline company shall arrange for repairs or relocation of a damaged pipeline as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price.</p>

Commented [w32]: GJ at SPU commented: What is the service to do with this information?
Dennis Moss: use it for future one-number locate requests?

Commented [w33]: GJ at SPU commented: Discard change. It is unclear what "verifiable" means. **Verified to the satisfaction of the facility owner?** See the limitations on written documents noted above. Again, excavators must pothole. **What does this mean?**

Positive response procedures

New RCW 19.122.030 (3)(d); amend (4)(a).

	<p>Definition no. 31 as proposed per October meeting and in 9/28/18 draft of proposed revisions) to read: (31) <u>"Positive response" means that a facility operator provides electronic notification to the one-number locator service in response to a locate request.</u></p>
	<p>RCW 19.122.030 (3) ... (a) The facility operator's locatable underground facilities, provide the excavator with reasonably accurate information by marking their location. <u>All marks shall indicate the name or initials of the facility operator, and when known, the best available description including width, if greater than two inches, and the quantity;</u> ... and <u>(d) The one-number locator service, beginning January 1, 2021, provide positive response status. The one-number locator service must then provide the excavator with the status of the locate request.</u> (4)(a) A facility operator must provide <u>positive response status</u> information to an excavator pursuant to subsection (3) of this section no later than two business days after the receipt of the notice provided for in subsection (1) of this section or before excavation commences, at the option of the facility operator, unless otherwise agreed by the parties. <u>If the positive response status is not complete within two business days, a final status update is required upon completion. ...</u> (4)(d) An excavator end user is responsible for determining the location of a service lateral on the <u>project site if property</u> or a service lateral owned by the project owner that they own. <u>Nothing in this section may be interpreted to require an end user to subscribe to a one-number locator service or to locate a service lateral within a right-of-way or utility easement.</u></p>

Commented [w34]: GJ of SPU commented "notification of what?"
Dennis Moss: The status of the locate?

Commented [w35]: Per GJ at SPU: This would require extensive additional marking and create visual clutter. Excavators should not be excavating based on marks alone, and the basis for this change is unclear.

Commented [DM36]: City of Tacoma proposed to change to 2022 to incorporate a new system {per J Jason Lewis comment 9/4/18

Commented [w37]: Per GJ at SPU: The intent here is unclear. Is it to require the one-number locator service to take on new responsibilities? If so, it should likely go elsewhere and be clarified (Perhaps 19.122.027).

Commented [w38]: Per GJ at SPU: Delete or rephrase. The intent is unclear. Is the information provided for in 19.122.030(3) and the methods authorized by (4)(b) intended to be part of "positive response status"?

Commented [DM39]: SnoPud (Clark McIsaac) commented: We are uncertain of the difference between positive response status and a final status update, we would like clarification around this difference. See Dig Law Comments document.

Commented [w40]: GJ at SPU commented: As written, this does not make sense. Why say anything about "end users?"

Utility identification procedures for newly constructed and replacement underground facilities

<p>NEW SECTION (after 19.122.055 and before 19.122.130): <u>19.122.065</u></p> <p>See HB 2979 sec. 7</p>	<p><u>As of January 1, 2020, all newly constructed and replacement underground facilities shall be installed so that at the time they enter service they are locatable by a common, accessible, and proven methods at the time they enter service, such as trace wires, or by accurate documentation, such as ground positioning system coordinates and as-built record drawings.</u></p>
	<p>(3) ...</p> <p>(a) The facility operator's locatable underground facilities, provide the excavator with reasonably accurate information by marking their location. <u>All marks shall indicate the name or initials of the facility operator, and when known, the best available description including width, if greater than two inches, and the quantity.</u></p> <p>.... and</p>

Commented [w41]: This is one of two proposed versions. The other is: "As of January 1, 2020, all newly constructed and replacement underground facilities shall be installed so that they are locatable by a common, accessible, and proven methods at the time they enter service."

Commented [w42]: SPU objects and would strike: "the costs of installing a tracer wire are high. Again, not all utility location costs are properly borne by Facility owners." GJ

Commented [w43]: Per Jason Lewis: State Wastewater Operator Association has potential language re digital maps.

Commented [w44]: Michelle Detwiler 11/05/2018:
PacifiCorp Comment) We are concerned this statement could allow utility owners to locate via GPS and/or as built drawings alone which is not viable due to the potential inaccuracy of these methods. As a facility owner we cannot allow our facilities to be located by GPS or original stand-alone drawings only. We want to make sure these methods can be used in addition to other, more precise, methods.

Commented [w45]: Per GJ at SPU: This would require extensive additional marking and create visual clutter. Excavators should not be excavating based on marks alone, and the basis for this change is unclear.

Membership composition of the dig law safety committee

Amend RCW 19.122.130 (6).

2679 Section 8 RCW 19.122.130	(6) To review complaints of alleged violations, the safety committee must appoint at least three and not more than five members as a review committee. The review committee must include ((the same number of)) members representing excavators and facility operators. ((One member representing facility operators must also be a representative of a pipeline company or a natural gas utility subject to regulation under Titles 80 and 81 RCW. The review committee must also include a member representing the insurance industry.))

Commented [w46]: GJ at SPU commented: Why remove the requirement of balance on the committee? Reject change. The committee should not be stacked with excavators or facility operators.

Commented [DM47]: Per Jason Lewis 9/4/18: Potential discussion with Cascade.

Liability for damage occurring from an excavation when either the excavator or the facility operator fails to comply with the statutory requirements relating to notice requirements or utility marking requirements

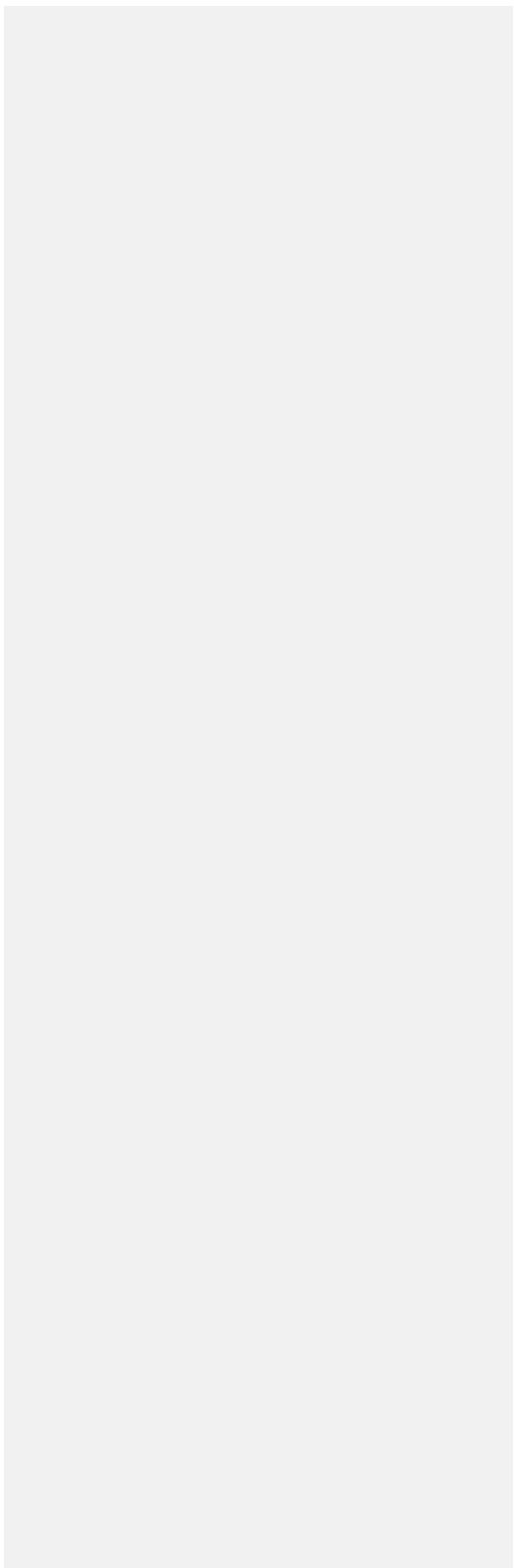
Add new section (2) to RCW 19.122.055.

	(2) <u>Any excavator who fails to notify a one-number locator service and causes damage to an underground facility other than a hazardous liquid or gas underground facility is subject to a civil penalty of not more than one thousand dollars for an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period.</u>

Ensuring consistency with the pipeline and hazardous materials safety administration (PHMSA) towards a uniform national standard

Amend RCW 19.122.030 (3)(a). *Note this may or may not be to the point.*

	<p>(3) Upon receipt of the notice provided for in subsection (1) of this section, a facility operator must, with respect to:</p> <p>(a) The facility operator's locatable underground facilities, provide the excavator with reasonably accurate information by marking their location. <u>All marks shall indicate the name or initials of the facility operator, and when known, the best available description including width, if greater than two inches, and the quantity;</u></p>
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Other issues

Design Locates	Bellevue / Everett Bellevue would support allowing requests made during the planning phase of a project if the system owners were able to recover costs sunk performing it. Design locates would need to have a lengthier deadline to accommodate this less urgent request. Per Michael Kruger at the end of his comments to 2679 10/19/2018