



Liability & Property Pool Workers' Compensation Fund

RISK CONTROL SOLUTIONS

A Service of the Michigan Municipal League Liability and Property Pool and
the Michigan Municipal League Workers' Compensation Fund

The MISS DIG System for Underground Utility Location

Many members own underground facilities such as water and sewer systems, or electrical and telecommunications networks. Even if a community is not the owner of such underground facilities, nearly every community at one time or another has been involved in performing some type of underground excavation, whether as a part of a major road reconstruction or the installation of a new street sign. In either case, Michigan law requires the use of the MISS DIG System for construction projects involving excavation and digging and the marking of the location of underground facilities near the site of any digging or excavation. More importantly, a few years ago, a significant change to the **Governmental Tort Liability Act (GTLA)** in Michigan expanded the potential liability a community may face for damaging underground facilities if the MISS DIG notification procedures are not followed.

The MISS DIG System

MISS DIG Systems, Inc. (Miss Dig) is a private, Michigan non-profit corporation governed by a board of directors comprising of representatives of the major entities involved with the operation and maintenance of underground facilities – telecommunications companies, natural gas and electric utilities, private contractors, and municipalities. Miss Dig was originally created as a joint-partnership between five of the major Michigan utilities companies operating in Oakland County in an effort to reduce damage to their underground utilities and prevent injuries and deaths during excavations around these utilities. Miss Dig formally incorporated itself as a nonprofit corporation in 1994. Miss Dig currently operates as a statewide notification and information delivery system that does not actually own or operate any underground utilities. State requires law requires Miss Dig membership whenever ownership and operation of certain underground facilities occurs.

The Basic MISS DIG Procedures

Currently, under the Miss Dig System, any party that will be excavating near any underground utilities must report in to the Miss Dig notification system with the location of the excavation at least 72 hours prior to beginning digging. The Miss Dig system then notifies each individual entity owning or operating underground utilities in the area of the excavation. Each of the individual owners is required to then mark the location of its underground facilities in the area of the proposed excavation with certain color-coded flags or paint according to the Miss Dig Act requirements. Facility owners are then required to record completed marking requests to Miss Dig's positive response system so that parties will know which underground facilities have been located for a particular project.

Once the excavation area has been flagged by all entities involved, the community should take pictures of the entire area to document that flagging was completed, *and* to document any potentially improper flagging that was performed by other utility owners.

Governmental Immunity and MISS DIG

Prior to 2014, local units of government enjoyed immunity from legal liability for damage caused to underground facilities during their own excavation and digging. This legal immunity was recognized as late as 2006 by the Michigan Court of Appeals as part of the GTLA. However, in 2013, the **Miss Dig Underground Facility Damage Prevention and Safety Act** and certain corresponding amendments to the GTLA were enacted which removed this liability protection for local communities that damaged another owner's underground facilities.

While a community's property and liability insurance may cover the costs associated with repairing damage done to another's underground facilities, the new MISS DIG Act includes a progressive fine schedule that may be imposed on a community, which generally would not be covered by an insurance policy. The Michigan Public Service Commission (MPSC) has the authority to review cases of damage done to underground facilities and if it is determined that the community has not followed the proper MISS DIG procedures and best practices during an excavation, fines and additional employee training may be imposed by the MPSC.

Penalties for Failing to Follow MISS DIG Procedures

Communities that are found to have damaged another's underground facilities face an increasingly severe schedule of fines for violating the MISS DIG Act during any given 12-month period as well as the possibility of damages awarded to the complaining party for the repair of its underground facilities. For a first infraction within a 12-month period, the MPSC may order a fine of \$5,000. For a second infraction within a 12-month period, the MPSC may order both a \$10,000 fine and the government entity must provide 'underground facility safety training' (a term not defined by the Miss Dig Act) at its own expense. For a third infraction within a 12-month period, the MPSC may order both a \$15,000 fine and that the governmental entity causing damage to another party's underground facilities must pay the cost of repair of those facilities to the owner.

Training

Additional information on the MISS DIG Act and the requirements of the Miss Dig System may be found online at www.missdig.org or by contacting your regional Damage Prevention Association found online through the Miss Dig website. The Miss Dig website also contains numerous training resources on best excavation practices and the procedures that utility owners must follow with respect to marking their own underground utilities. MIOSHA also has a 2-page summary sheet of the new MISS DIG Act requirements found online at:

http://www.michigan.gov/documents/lara/lara_miosha_constfact_miss_dig_new_public_act_174_457565_7.pdf

Summary

1. Anytime excavation or digging will be performed anywhere near underground utilities, you must notify the Miss Dig System at least 72 hours prior to beginning work unless it is an emergency situation.
2. Owners of underground utilities must be registered with the Miss Dig System and must enter completed marking requests into the positive response system.
3. Local units of government no longer enjoy immunity if they damage another's underground utility lines during digging and excavation.
4. The local unit of government may be responsible for the cost to repairing the damaged underground utility lines and may also face increasing fines by the MPSC for failing to follow Miss Dig procedures and best practices.



Important Telephone Numbers

MISS DIG	http://www.missdig.org/
MML Risk Management Services	734/662-3246 or 800/653-2483
Loss Control Services	800/482-2726

Other **RISK CONTROL SOLUTIONS** that address some of these issues are:

- Contractors*
- Excavating and Trenching*
- Reducing Exposures from Confined Space Entry*
- Safety and Liability Exposures for Public Works Equipment*

Note: This document is not intended to be legal advice. It does not identify all the issues surrounding the particular topic. Public agencies are encouraged to review their procedures with an expert or a competent attorney who is knowledgeable about the topic.