On November 26, 2013, Governor Snyder signed legislation creating Act No. 174, better known as the “MISS DIG Underground Facility Damage Prevention and Safety Act” which goes into effect on April 1, 2014. This Act expands upon a prior act, which established a system to notify parties of the location of underground facilities before performing excavation activities. The Michigan Damage Prevention Board (MDPB), a group of utility, regulatory and excavation stakeholders that work to improve regulations and requirements to minimize underground utility damage in this State, supported the enactment of this legislation.

This new Act greatly expands on the prior MISS DIG Act by:

1. expanding the defined activities that constitute “excavation” for purposes of notifying MISS DIG to now include:
   - Moving, removing, or otherwise displacing earth, rock, or other material below existing surface grade with power tools or power equipment, including, but not limited to, grading, trenching, tiling, digging, drilling, boring, augering, tunneling, scraping, cable or pipe plowing, and pile driving; and wrecking, razing, rending, moving, or removing a structure or mass of materials;
2. adding over thirty defined terms to clarify the “MISS DIG law” and minimize common compliance issues;
3. establishing clearer standards for soft-excavation around exposed facilities; and
4. mandating the participation of the facility owners and operators in the notification system to administer a 1-call system for the location of facilities to prevent utility damage resulting from uninformed excavation, specifically defined as MISS DIG System, Inc., which is a Michigan nonprofit corporation formed by these facility owners and operations.

Under this new Act, anyone performing “excavation” must contact MISS DIG at least 72 hours prior to but no earlier than 14 calendar days before commencing excavation activities. The prior act permitted notice as far ahead as 21 days before excavating. In addition to this change, the new Act requires a heightened response time from the notification system, as short as 3 hours if the excavator has already received a response and requires further assurances or if there is a visible error in the field. Moreover, the new Act also increases administrative requirements, which will likely result in added costs to the notification system, to be borne by MISS DIG members, i.e., facility owners and operators.

The Act also ensures compliance by establishing several grounds on which to charge a non-complying party with a misdemeanor, including the willful removal or destruction of notification stakes as established by the prior act. Under the new Act, a party will also be guilty of a misdemeanor for knowingly damaging a facility and failing to provide immediate notice to the owner, or otherwise concealing damage. Non-complying parties can be punished by imprisonment for not more than 1 year, or a fine up to $5,000.00. Additionally, this Act does not attempt to hamper any party’s right to civil remedies for another party’s violation of this Act.

In sum, this new Act more clearly addresses and defines Michigan law with respect to excavation near underground facilities; requires heightened response times; and provides several mechanisms to ensure compliance. The enactment of this new legislation hopefully reduces the threat of underground facility damage and provides a safer work environment in our State.

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