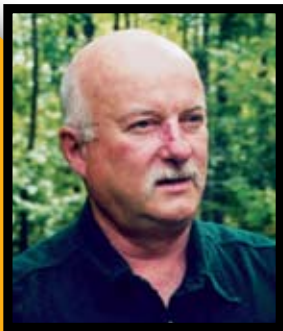




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## Spiller's Pay: Who's Responsible for Costs of Underground Damage

### Mike's Viewpoint— Applying Spiller's Pay to Scenario

Ever hear of Spiller's Pay? I hadn't until a meeting of the Underground Contractor's Association held earlier this year in suburban Chicago. Essentially, Spiller's Pay is a local ordinance that requires excavators to pay municipalities' expenses for sending emergency responders to gas line damages. You spill, you pay. You pay not only for the local municipality's time and expense, but you will pay neighboring municipalities' expense for covering calls while the local responders are out on the gas line damage. If I recall, seems like \$7,500 was mentioned as the average bill being sent to excavators.

Now it gets a bit more interesting—the contractor must pay even if the locate was inaccurate or incomplete. This has been upheld by a court ruling. The ruling states that gas companies and locators will never be fined for Spiller's Pay, because at the time of a damage, they are not “in control of the system.”

Apparently, a local ordinance is a different sort of animal. Think a state one-call law trumps local ordinances? Think again. And I wonder about a new federal law requiring excavators to call 911 if they damage a gas line. Think these municipalities were aware of this when they passed these local ordinances?

I guess charging fees for 911 services is not a necessarily new thing. But, the idea is spreading as one fire chief talks to another. I'm sure local taxpayers won't protest the notion of Spiller's Pay much, either.

Now, what about a Spiller's Pay fine? Let's take a look at this scenario:

A telephone company crew calls in a ticket for installing 1,000 feet of duct in a municipally-owned public right of way. A contract

locator working for the gas company responds to the one-call request and marks several gas services that will be in conflict with the duct route. The locator, however, fails to mark one gas service. Days later, the contractor bores into this gas line and gas spews all over the neighborhood. A call is made to 911 and emergency personnel respond to help make the area safe. The gas company fixes the leak without incident and things get back to normal. A month later, the phone company gets a \$7,500 fine from the city.

Let's change something in this hypothetical situation—the locator accurately marked all of the gas services, but the markings on the hit gas service were no longer visible the day the phone company did their boring.

### Ron's Viewpoint— Determining the Responsible Party

First off, many people reading this will probably see Spiller's Pay as a disincentive for excavators to call 911 when they hit a gas line. I'd have to agree that an excavator facing a \$7,500 fine might hesitate to make the call.

However, Spiller's Pay will probably be seen by increasing numbers of local governments as a good way to help cover costs of emergency services. We might as well accept that and move on to dealing with the ramifications.

In Mike's hypothetical situation, the gas line was marked in a timely matter as required by law, and most state laws require the excavator to maintain the marks. If the marks are obliterated, a re-mark must be requested through the one-call center. However, there have been cases where the excavator did not know that marks had been obliterated. Rain or snow may have compromised paint marks

between the time the line was marked and the time the excavator arrived on the scene. Kids may have pulled up flags and used them as toys or bicycle decorations. Property owners have been known to erase marks, thinking they are unsightly graffiti.

These things do happen, probably more often than we might think. That's why professional excavators look around for above-ground indications of unmarked below-ground lines. In most cases, they would see some indication—possibly a gas meter on a building wall, or at least a regulator where a line comes out of the ground and into the wall, or maybe a valve box near the curb.

I personally know of a case where two power cables served a home. One came down the edge of the driveway, but the other had been installed later and was about 30 feet away. Only one was marked, but if the excavator had looked, he would have seen an extra cable coming off a transformer on a nearby pole.

Not being a lawyer, I don't know how far the Spiller's Pay concept can be stretched, but you can't argue much with the fact that the excavator is in control at the jobsite. That's pretty basic and many would say reasonable. Therefore, the excavator would pay costs associated with a damage.

Of course, what is reasonable and what is not is fodder for lawsuits.

The bottom line for damage prevention is that detecting above-ground indications of underground lines needs to be in the excavator's bag of skills and knowledge. The Spiller's Pay concept can be viewed as an incentive for this. More damages would be prevented, and fewer damages would mean fewer “spillers” being assessed for emergency services and incurring other damage costs. **UF**