



2011 Nebraska Farm Bureau Policy Development Guide

Soil Sampling and Digger's Hotline

Issue

Legislation was introduced in the 2011 Nebraska Legislature to clarify whether persons performing soil sampling are required to contact the Nebraska Digger's hotline.

Background

In December 2010, the Nebraska Agri-Business Association learned that an agricultural retailer in the Columbus, Neb., area was told by a technician from a utility company that the retailer could not take soil samples without first contacting Nebraska Digger's Hotline. The company contacted the hotline for confirmation and was informed that the technician was correct. The Digger's Hotline employee said that any time the soil is disturbed, the hotline must be called.

Legislation adopted in 1994 required notice of excavation to be given to the Digger's Hotline. For 16 years, farmers, ranchers, agricultural input suppliers, soil testing labs, NRDs and other consultants have not been notified, nor have they been apprised, that they should notify Digger's Hotline when disturbing the soil. To Nebraska Farm Bureau's knowledge, there has not been a widespread problem associated with these practices.

The Agri-Business Association and Sen. Tom Carlson, chair of the Agricultural Committee, requested an informal Attorney General's opinion on this issue to determine the interpretation of the law and whether or not agriculture is truly exempt. The current statute indicates that one of the exemptions to the definition of excavation is "tilling of soil and gardening for seeding and other agricultural purposes." Because the statute is not clear on the meaning of "agricultural purposes" and because the review of the history of the original legislation and debate is not specific on the meaning, the Attorney General's office maintains that the "agricultural

purposes” exemption was meant to exempt farmers performing certain excavation activities on their own land, where they are most likely aware of the location of underground facilities.

Soil sampling was not discussed in the debate, and the Attorney General’s opinion stated that soil sampling is a “normal agricultural activity.” However, because most of the time soil sampling is not done by the farmer, but rather by a third party such as a crop consultant, “individuals presumably not as familiar with the land upon which they are collecting samples,” this may fall outside of “other agricultural purposes.” Thus the request for legislative clarification.

Because of this request, Sen. Galen Hadley introduced LB 484 in the 2011 legislature on behalf of Nebraska Farm Bureau and the Nebraska Agri-Business Association. Nebraska Farm Bureau began a dialog with the One-Call Notification Board of Directors and various utilities concerned about the legislation, which as introduced, would allow a blanket exemption for soil testing.

LB 484 was discussed extensively during the session, although not on the floor. In March, Atty. Gen. Jon Bruning clarified his original informal opinion relating to the issue. He said, “To be clear – farmers, their employees and any third parties they contract with to do routine soil sampling for agricultural purposes do not need to call the Digger’s Hotline prior to taking a soil sample.”

While the attorney general has clarified what the current language is to mean in practice, it is possible that the utilities or Digger’s Hotline will bring forward legislation on this topic. Based on discussions from 2011, the area of interest would be agreeing on a depth below which soil samplers would have to call if they were to sample more deeply.

Farm Bureau Policy

Nebraska Farm Bureau does not have specific policy on this topic.

Questions for Discussion

1. Should persons be required to contact the Digger’s Hotline if soil samples exceed a certain depth? If so, what is an acceptable depth? Suggested depths have been from 12 to 24 inches.
2. How would calling Digger’s Hotline affect your farming practices?
3. Do the people who provide soil sampling services for you currently contact Digger’s Hotline? Do you contact Digger’s Hotline when you are doing deep field work? Do your friends and neighbors? How does the safety concern balance with normal everyday risks in farming?

