

# EXCAVATION

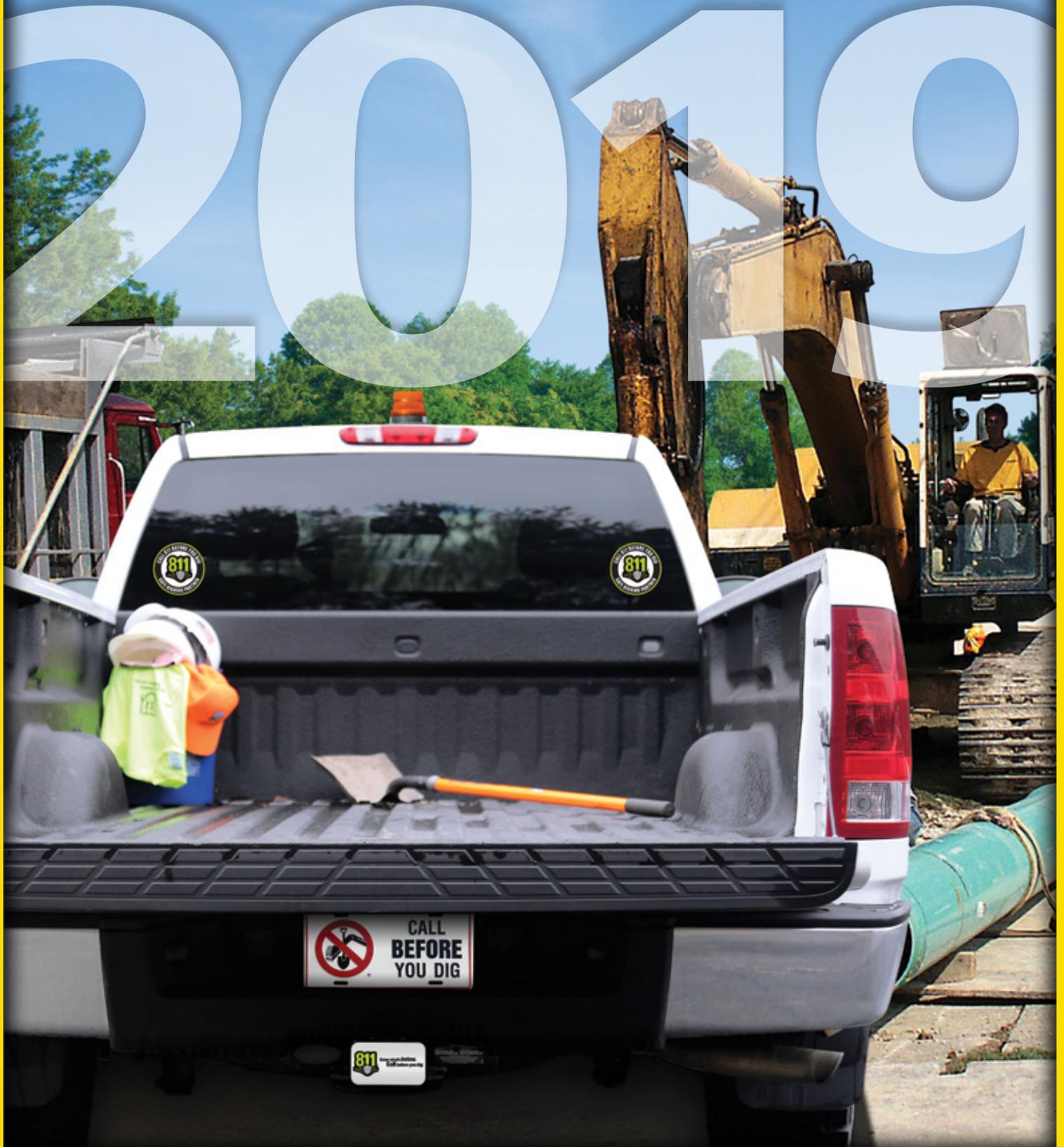
## SAFETY GUIDE & DIRECTORY



Know what's below.  
Call before you dig.

ISSUE NUMBER 14 • \$2.99

Featuring current  
practices & technological  
insights from  
industry leaders!



BY JAMES J. PROSZEK

# IS MY LOCATE REQUEST **LEGAL?**

According to the 2017 DIRT Report, the root cause category of “Notification Practices Not Sufficient” accounted for one percent of all reported damage incidents in 2017. This category covers events where the excavator provided, or attempted to provide, notice to the One Call center, but something went wrong, such as: (1) the excavator gave an incorrect description of the work site which led to no marks at the actual work site; or (2) the excavator did not provide notice sufficiently in advance of the beginning of excavation or began work before the locate marks were completed.

For the years 2015, 2016 and 2017, this category has typically accounted for approximately one percent of the total damages in each year. While one percent does not seem like a large number, this category still was the root cause of 5,645 reported damage incidents in 2017.

## **I. GENERAL CONSIDERATIONS**

The starting point to determine whether a locate request is “legal” are the statutory provisions in the “One Call” law of the state in which the excavation is to be performed. However, familiarity with the requirements of the statutes alone is not sufficient. In a number of states, including New York and Oregon, the One Call statutes themselves contain only a bare bones description of excavation requirements. The detailed requirements, including notice requirements, are found in the regulations promulgated by the governing administrative agency in such states.

Moreover, a general precept of negligence law is that simply complying with the letter of the law is not sufficient. If a reasonable professional engaged in excavation would go beyond the requirements of the

statutes, i.e., follow the procedures set forth in reasonable and accepted industry standards and practices, an excavator may still be found to be liable even if he complied with the requirements of the statutes, but not with additional requirements imposed by industry standards. The most common source of such industry standards is the Common Ground Alliance (CGA) Best Practices and the excavation handbooks the state One Call or 811 centers publish.

## **II. REQUIRED PRE LOCATE REQUEST ACTIONS**

Many states require an excavator to “white line” the excavation area, i.e., mark the boundary of the excavation area with white paint, before providing notice to the One Call center. Washington’s One Call law, for example, provides that if white lining