

Maine Revised Statutes
Title 23: TRANSPORTATION
Chapter 307: PROTECTION OF HIGHWAYS

§3360-A. PROTECTION OF UNDERGROUND FACILITIES

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms shall have the following meanings.

A. "Business day" means any day other than Saturday, Sunday or a legal holiday. [1979, c. 362, §2 (NEW).]

A-1. "Borrow pit" has the same meaning as provided in Title 38, section 482, subsection 1-A. [1999, c. 718, §1 (NEW).]

A-2. "Commercial timber harvesting activity" means the cutting or removal of timber for the primary purpose of selling or processing forest products and includes the attendant operation of mobile or portable chipping mills and of cutting and skidding machinery and the creation, use and maintenance of skid trails, skid roads, winter haul roads and other roads to facilitate timber harvesting. [1999, c. 718, §1 (NEW).]

B. "Emergency excavation" means immediate excavation necessary to prevent injury, death or loss of an existing vital service. [1979, c. 362, §2 (NEW).]

C. "Excavation" means any operation in which earth, rock or other material below the ground is moved or otherwise displaced, by means of power tools, power equipment or explosives and including grading, trenching, digging, ditching, drilling, augering, tunneling, scraping and cable or pipe driving, except tilling of soil and gardening or displacement of earth, rock or other material for agricultural purposes. [2001, c. 577, §1 (AMD).]

C-1. "Excavator" means any person proposing to make, making or contracting for an excavation. [1991, c. 437, §1 (NEW); 1991, c. 437, §12 (AFF).]

D. "Person" means an individual, partnership, municipality, state, including an agency or department of the state, county, political subdivision, utility, joint venture or corporation and includes the employer of an individual. [2011, c. 588, §1 (AMD).]

D-1. "Shoulder-grading activity" means highway maintenance work that involves the use of a motorgrader or other suitable construction equipment with a blade on the shoulder of a road to remove accumulated sand, gravel, sod or other material to establish drainage away from the traveled portion of the highway. [2001, c. 577, §2 (NEW).]

E. "Underground facility" means any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, appurtenances and those parts of poles below ground. This definition does not include liquefied propane gas distribution systems that are not included within the scope of 49 Code of Federal Regulations, Part 192 and highway drainage culverts or under drains. [2011, c. 588, §2 (AMD).]

F. "Underground facility operator" means the owner or operator of any underground facility, other than an underground oil storage facility as defined in Title 38, section 562-A, subsection 21 or an airport aviation fuel hydrant piping system, used in furnishing electric, telephone, telegraph, gas, petroleum transportation or cable television service. "Underground facility operator" does not include a municipality or a public utility with fewer than 5 full-time employees or fewer than 300 customers or a person that owns underground facilities on its own property for commercial or residential purposes. [2001, c. 577, §3 (AMD).]

G. "Utility" means any public utility as defined in Title 35-A, section 102, subsection 13. [1991, c. 437, §1 (NEW); 1991, c. 437, §12 (AFF).]

[2011, c. 588, §§1, 2 (AMD) .]

1-A. Damage prevention system. Each underground facility operator shall be a member of and participate in an underground facility damage prevention system, referred to in this section as the "system." The system shall operate during regular business hours throughout the year and maintain adequate operations at all other times to receive and process emergency notifications of proposed excavations. The system shall receive notices of proposed excavations and immediately transmit those notices to underground facility operators whose facilities may be affected. The cost for operation of the system must be apportioned equitably among members. Nothing in this subsection prohibits a municipality, utility or other entity that owns or operates an underground facility from voluntarily becoming a member of the system. Notwithstanding subsection 1, paragraph F, a person that voluntarily becomes a member of the system is deemed an underground facility operator for the purposes of this section.

[1999, c. 718, §2 (AMD) .]

2. Responsibility of designers.

[2001, c. 577, §4 (RP) .]

3. Notice by excavator. A person may not begin excavation without first giving notice as required by this section, unless exempted pursuant to this section.

A. In addition to any other notices required under this section, each excavator shall notify the system of the location of the intended excavation at least 3 business days but not more than 30 calendar days prior to the commencement of excavation, except as provided in paragraph G. [2003, c. 373, §1 (AMD) .]

B. Notice may be in writing, by telephone or by electronic facsimile as long as an excavator acquires and records an acknowledgement of the receipt of any notice the excavator sends by electronic facsimile. For purposes of this section, the system shall provide a toll-free telephone number. [1991, c. 437, §3 (NEW); 1991, c. 437, §12 (AFF) .]

C. Prior to notifying the system, the area of proposed excavation must be marked by the excavator in a manner designed to enable the operator of the underground facility to know the approximate boundaries of the proposed excavation. [1991, c. 437, §3 (NEW); 1991, c. 437, §12 (AFF) .]

D. If an excavation involves blasting, the excavator shall provide written notice of that blasting, either in the initial notice or in a subsequent notice, accurately specifying the date and location of that blasting. This written notice must be given and received at least 24 hours in advance except that, in the case of an unanticipated obstruction requiring blasting, the excavator shall provide written notice not less than 4 hours in advance of that blasting. [1991, c. 437, §3 (NEW); 1991, c. 437, §12 (AFF) .]

E. The excavation must commence within 30 days of notification under this subsection. If the proposed excavation or blasting is not completed 60 calendar days after notification under this subsection or the excavation or blasting will be expanded outside of the location originally specified in the notification, the excavator responsible for that excavation shall again notify the system as specified in paragraph A. [2015, c. 213, §1 (AMD) .]

F. In the case of an excavation involving subcontractors or other arrangements in which more than one entity qualifies as the excavator under this section, the excavator directly responsible for performing the excavation shall ascertain that all notifications required by this subsection and subsections 5, 5-A and 10-A are performed. [2011, c. 588, §3 (AMD) .]

G. If an excavator notifies the system and nonmember operators as required by this section and is informed by the system and each nonmember operator, including private landowners, that no underground facilities exist in the proposed excavation area, the excavator is not required to wait the 3 days as required by this subsection and subsection 10-A and may begin excavation immediately. [2011, c. 588, §4 (AMD).]

[2013, c. 557, §1 (AMD); 2015, c. 213, §1 (AMD) .]

3-A. Notification by system. Upon receiving notice of excavation, the system shall notify immediately all members whose underground facilities may be affected. The system shall maintain adequate records to document compliance with requirements of this chapter.

[1991, c. 437, §4 (NEW); 1991, c. 437, §12 (AFF) .]

3-B. Additional notification by certain utilities. In addition to providing any other notices required under this section and before commencing any excavation for the purposes of working on an underground gas transmission line, a gas utility as defined in Title 35-A, section 102, subsection 8 or a natural gas pipeline utility as defined in Title 35-A, section 102, subsection 10 shall provide to the fire department within whose service area the excavation will occur notice of its intent to excavate. This notice must be in writing or by telephone and must be given at least 3 business days prior to the utility commencing work. The utility may not commence work until it has received from the fire department an acknowledgment of the notice either by telephone or in writing.

[1991, c. 437, §4 (NEW); 1991, c. 437, §12 (AFF) .]

3-C. Information provided to municipalities, fire departments and emergency response agencies. Each gas utility as defined in Title 35-A, section 102, subsection 8 or natural gas pipeline utility as defined in Title 35-A, section 102, subsection 10 shall provide maps to:

A. Each municipality within which it operates gas or natural gas underground transmission facilities. These maps must clearly indicate the location and depth of all main supply underground transmission facilities located within the jurisdiction of the municipality; [1991, c. 437, §4 (NEW); 1991, c. 437, §12 (AFF).]

B. Each fire department within whose service territory it operates gas or natural gas underground transmission facilities. These maps must clearly indicate the location and depth of all main supply underground transmission facilities located within the jurisdiction of the fire department; [1991, c. 437, §4 (NEW); 1991, c. 437, §12 (AFF).]

C. Each county emergency management agency within which it operates gas or natural gas underground transmission facilities. These maps must clearly indicate the location and depth of all main supply underground transmission facilities located within the jurisdiction of the county emergency management agency; and [1991, c. 437, §4 (NEW); 1991, c. 437, §12 (AFF).]

D. The Maine Emergency Management Agency. These maps must clearly indicate the location and depth of all main supply underground transmission facilities that the utility operates in this State. [1991, c. 437, §4 (NEW); 1991, c. 437, §12 (AFF).]

The utility must provide updated maps to the appropriate entities whenever changes occur in the configuration of the utility's main supply underground facilities.

[1991, c. 437, §4 (NEW); 1991, c. 437, §12 (AFF) .]

4. Operator response to notice locating facilities. An underground facility operator shall, upon receipt of the notice provided for in subsection 3-A, advise the excavator of the location and size of the operator's underground facilities and all underground facilities used in furnishing electric or gas service that are connected to the operator's facilities, located in the public way and known to the operator in the proposed

excavation area by marking the location of the facilities with stakes, paint or by other identifiable markings. The marking must identify a strip of land not more than 3 feet wide directly over the facility or a strip of land extending not more than 1 1/2 feet on each side of the underground facility and must indicate the depth of the underground facility, if known. The underground facility operator shall complete this marking no later than 2 full business days after receipt of the notice. After the underground facility operator has marked the location of that operator's underground facilities in the proposed excavation area, the excavator is responsible for maintaining the markings at the location, unless the excavator requests remarking at the location due to obliteration, destruction or other removal of the markings. The underground facility operator shall remark the location within one business day following the receipt of a request to remark.

If the proposed excavation is of such length or size that the underground facility operator advises the excavator that the operator can not reasonably respond with respect to all the operator's underground facilities within 2 full business days, the excavator shall notify the operator of the specific location in which excavation will first be made and the operator shall respond with respect to the operator's underground facilities in that location within 2 full business days and for the remaining facilities within a reasonable time thereafter.

The system may adopt rules requiring, under certain circumstances, face-to-face meetings between excavators and underground facility operators.

[2001, c. 577, §6 (AMD) .]

4-A. Alternative notice by certain excavators.

[1999, c. 718, §4 (RP) .]

4-B. Modification and revocation of clearance.

[1999, c. 718, §4 (RP) .]

4-C. Excavation methods. An excavator may not use mechanical means of excavation when excavating within 18 inches of any marked underground facilities until the underground facilities have been exposed, except that mechanical means may be used, as necessary, for initial penetration and removal of pavement, rock or other materials requiring use of mechanical means of excavation. Once the underground facilities have been exposed, further excavation must be performed employing reasonable precautions to avoid damage to the underground facilities, including, but not limited to, any substantial weakening of structural or lateral support of the facilities or penetration or destruction of the facilities or their protective coatings. For the purposes of this subsection, "mechanical means of excavation" means excavation using any device or tool powered by an engine except air vacuum methods of excavation.

[1999, c. 718, §5 (NEW) .]

4-D. Abandoned or inactive facilities. Beginning on the date an owner or operator of underground facilities is required by the Public Utilities Commission to implement electronic mapping, the owner or operator shall indicate the existence of facilities abandoned or inactive after that date on its electronic mapping system and shall notify an excavator when abandoned or inactive facilities exist in the area of an excavation. If an owner or operator of an underground facility does not maintain an electronic mapping system, the owner or operator shall notify the excavator if the operator is aware of abandoned or inactive facilities in the area of an excavation.

[2001, c. 577, §7 (NEW) .]

5. Emergency excavations. In an emergency, an excavator may commence an excavation after having taken all reasonable steps, consistent with the emergency, to notify the system and to mark the excavation site consistent with subsection 3, paragraph C. The excavator shall commence an excavation undertaken pursuant

to this subsection within 12 hours after providing notice to the system, or as soon thereafter as can safely be accomplished. Each underground facility operator shall locate its underground facilities as soon as reasonably possible after receiving notification of an emergency excavation whether or not the excavation has begun.

[2011, c. 72, §2 (AMD) .]

5-A. Notice of damage. When an underground facility is damaged, the excavator causing the damage shall immediately notify the affected underground facility operator. The excavator may not backfill an excavation where damage has occurred without first receiving permission from the affected operator.

[1991, c. 437, §6 (NEW); 1991, c. 437, §12 (AFF) .]

5-B. Exemption; commercial forestry operations. A person is exempt from the notice requirements of subsection 3 for any excavation undertaken in conjunction with a commercial timber harvesting activity as long as the excavation:

A. Is not conducted in a public place, on public land or within a public easement, including, but not limited to, a public way; [1999, c. 718, §7 (NEW) .]

B. Is not conducted within 100 feet of an easement or land owned by an underground facility operator; [1999, c. 718, §7 (NEW) .]

C. Is not conducted within 100 feet of an underground facility; and [1999, c. 718, §7 (NEW) .]

D. Does not involve the use of explosives. [1999, c. 718, §7 (NEW) .]

[2011, c. 72, §3 (AMD) .]

5-C. Exemptions; written agreements. A person undertaking an excavation in conjunction with a commercial timber harvesting activity within 100 feet of an underground facility or on an easement or land owned by an underground facility operator or within 100 feet of an easement or land owned by an underground facility operator is exempt from the notice requirements of subsection 3 and from the provisions of subsection 4-C if the person:

A. Has contacted the system to determine the identity of all underground facility operators that own or operate underground facilities within the area of the excavation; [1999, c. 718, §7 (NEW) .]

B. Has entered into written agreements with all underground facility operators owning or operating facilities in the area of the excavation and with all persons owning the land on which the excavation occurs; and [1999, c. 718, §7 (NEW) .]

C. Undertakes the excavation in accordance with the terms of the written agreements. [1999, c. 718, §7 (NEW) .]

[1999, c. 718, §7 (NEW) .]

5-D. Exemption; cemeteries. An excavator is exempt from the notice requirements of subsection 3 and subsection 10-A for any excavation undertaken within the boundaries of a cemetery if the following procedures are followed.

A. The person responsible for operating the cemetery shall provide notice pursuant to subsections 3 and 10-A identifying the entire cemetery as a potential excavation site. Owners and operators of underground facilities within the cemetery shall mark those facilities in accordance with subsections 4 and 10-A, as applicable. Thereafter, the person responsible for operating the cemetery shall maintain sufficient records or markings to identify the location of underground facilities within the cemetery. [2011, c. 588, §5 (AMD) .]

B. The person responsible for operating the cemetery shall identify the location of any underground facilities within the excavation area and take appropriate action to avoid damage to the facilities. [2001, c. 577, §8 (NEW).]

[2011, c. 588, §5 (AMD) .]

5-E. Shoulder-grading procedure. An excavator that is a licensing authority as defined by Title 35-A, section 2502, subsection 1 or its designee may be exempt from subsection 4-C for any excavation that is shoulder-grading activity if the excavator complies with this subsection. If an excavator chooses to excavate under this subsection, all owners of underground facilities within the area of excavation must comply with this subsection.

A. The excavator shall provide notice as required by subsections 3 and 10-A and the owner or operator of underground facilities shall respond as required by subsections 4 and 10-A. [2011, c. 588, §6 (AMD) .]

B. The excavator shall contact each owner or operator of underground facilities within the area of proposed shoulder-grading activity and describe the scope of its proposed shoulder-grading activity, including the anticipated depth of grading. [2001, c. 577, §8 (NEW) .]

C. The owner or operator of each underground facility shall within 3 business days determine and notify the excavator whether the depth of its facility is sufficient to avoid damage. [2001, c. 577, §8 (NEW) .]

D. After receipt of notice provided pursuant to paragraph C, the excavator may commence its shoulder-grading activity in a manner that does not disturb the facilities indicated by the owners or operators of the underground facilities or, if a facility is located at an insufficient depth to allow the proposed shoulder-grading activity, prior to the shoulder-grading activity the licensing authority may require the owner or operator of the underground facility to lower or otherwise move its facility in accordance with applicable law and the terms of its license. [2001, c. 577, §8 (NEW) .]

[2011, c. 588, §6 (AMD) .]

5-F. Water well construction; rulemaking. The Public Utilities Commission shall by rule establish notice requirements for excavation associated with drinking water well construction. In establishing the rule, the commission shall consider:

A. Whether notice requirements established in the rule should be limited to the drilling of a well or should also apply to other excavation associated with well construction activities, such as trenching for installation of pipes and equipment; [2003, c. 373, §3 (NEW) .]

B. Whether notice requirements established in the rule should be based on factors such as geographic location, population density or other criteria bearing on the efficiency and effectiveness of the notification process and any offsetting public safety risks; [2003, c. 373, §3 (NEW) .]

C. Whether the amount of time required for notice prior to excavation should be reduced; and [2003, c. 373, §3 (NEW) .]

D. Any notice requirements associated with drinking water well construction that the commission determines appropriate. [2003, c. 373, §3 (NEW) .]

Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 373, §3 (NEW) .]

5-G. Alternative notice requirement procedures for excavations; rulemaking. The Public Utilities Commission may by rule extend alternative notice requirements established for excavation associated with drinking water well construction pursuant to subsection 5-F to other types of excavation. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 334, §1 (NEW) .]

5-H. Newly installed underground facilities in active excavation areas; rulemaking. The Public Utilities Commission shall by rule establish procedures to reduce the incidence of damage to newly installed underground facilities in active excavation areas as defined by the commission by rule. In establishing the rule, the commission may consider adopting additional requirements for excavators or operators, including renotification and marking requirements and system notification procedures. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 334, §1 (NEW) .]

5-I. Exemption; quarries and borrow pits. An excavator may undertake an excavation within a quarry or borrow pit in accordance with this subsection.

A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Lawfully expanded after March 1, 2011" means an expansion of a quarry or borrow pit after March 1, 2011:

(a) That requires an authorization, license, permit or variance issued by the Department of Environmental Protection pursuant to Title 38, chapter 3, article 6, 7 or 8-A or by the former Maine Land Use Regulation Commission or the Maine Land Use Planning Commission under Title 12, chapter 206-A and for which a valid authorization, license, permit or variance has been issued; or

(b) That requires a filing of a notice of intent to comply pursuant to Title 38, chapter 3, article 7 or 8-A and a complete filing has been made.

(2) "Lawfully located on March 1, 2011" means that on March 1, 2011 the quarry or borrow pit existed and:

(a) The owner or operator had been issued all authorizations, licenses, permits or variances by the Department of Environmental Protection pursuant to Title 38, chapter 3, article 6, 7 or 8-A or by the former Maine Land Use Regulation Commission under Title 12, chapter 206-A necessary to operate that quarry or borrow pit; and

(b) The quarry or borrow pit was in compliance with any applicable requirements of Title 38, chapter 3, article 7 or 8-A or with any applicable land use district standards of the former Maine Land Use Regulation Commission adopted under Title 12, chapter 206-A.

(3) "Lawfully located after March 1, 2011" means that the quarry or borrow pit is established after March 1, 2011 and:

(a) The owner or operator possesses all authorizations, licenses, permits or variances issued by the Department of Environmental Protection pursuant to Title 38, chapter 3, article 6, 7 or 8-A or by the former Maine Land Use Regulation Commission or the Maine Land Use Planning Commission under Title 12, chapter 206-A necessary to operate that quarry or borrow pit; and

(b) The quarry or borrow pit is in compliance with the requirements of Title 38, chapter 3, article 7 or 8-A or with applicable land use district standards of the former Maine Land Use Regulation Commission or the Maine Land Use Planning Commission adopted under Title 12, chapter 206-A.

(4) "Quarry" has the same meaning as in Title 38, section 490-W, subsection 17. [2013, c. 405, Pt. B, §4 (AMD).]

B. Except as provided in paragraph C, an excavator is exempt from the notice requirements of subsection 3 and subsection 10-A when undertaking an excavation within a quarry or borrow pit lawfully located on March 1, 2011. [2011, c. 588, §7 (AMD).]

C. An excavator undertaking an excavation within a quarry or borrow pit lawfully located after March 1, 2011 or lawfully expanded after March 1, 2011 is governed by the following.

(1) The owner or operator of the quarry or borrow pit shall provide notice pursuant to subsections 3 and 10-A identifying the entire area potentially subject to excavation.

(2) Owners and operators of underground facilities in the area identified pursuant to subparagraph (1) shall mark those facilities in accordance with subsections 4 and 10-A, as applicable. Thereafter, the owner or operator of the quarry or borrow pit shall maintain sufficient records or markings to identify the location of underground facilities within the area identified pursuant to subparagraph (1) and an excavator undertaking an excavation in that area is exempt from any further notice requirements under subsection 3 and subsection 10-A.

(3) The owner or operator of the quarry or borrow pit shall take appropriate action to avoid damage to the underground facilities identified pursuant to subparagraph (2). [2011, c. 588, §7 (AMD).]

[2013, c. 405, Pt. B, §4 (AMD).]

5-J. Unpaved public road grading procedure. A person may undertake qualified grading activity in accordance with this subsection.

A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Approved road" means a public way, or portion of a public way, on which a person may undertake qualified grading activity in accordance with this subsection.

(2) "Licensing authority" has the same meaning as in Title 35-A, section 2502, subsection 1.

(3) "Qualified grading activity" means maintenance work that involves the use of suitable equipment with a blade to level or otherwise maintain the sand, gravel, sod or other surface of an unpaved public way.

(4) "Requested road" means a public way, or portion of a public way, on which a licensing authority requests authority to conduct qualified grading activity under this subsection.

(5) "Shallow-depth facilities" means underground facilities located at an insufficient depth to allow qualified grading activity. [2011, c. 72, §5 (NEW).]

B. A licensing authority shall provide notice identifying the requested road and the intended depth of the qualified grading activity to the system and to persons who are not members of the system who own or operate underground facilities in the requested road. [2011, c. 72, §5 (NEW).]

C. Upon receiving notice pursuant to paragraph B, the system shall notify immediately all members whose underground facilities may be affected in accordance with subsection 3-A. [2011, c. 72, §5 (NEW).]

D. The owner or operator of each underground facility within the requested road shall within 3 business days of receiving notice advise the licensing authority of the location and size of the owner's or operator's underground facilities and all underground facilities used in furnishing electric or gas service that are connected to the owner's or operator's facilities and known to the owner or operator that are located in the requested road and whether the depth of the facilities is sufficient to avoid damage by qualified grading activity. [2011, c. 72, §5 (NEW).]

E. After waiting 3 business days of providing notice under paragraph B, the licensing authority may file with the Public Utilities Commission a notice of intent to conduct qualified grading activity on the requested road. Upon filing the notice of intent, the requested road becomes an approved road and any person may undertake qualified grading activity on the approved road at any time during the 12 months following filing of the notice of intent and is not required to provide any further notices under this section during those 12 months. If the licensing authority has been notified pursuant to paragraph D that there are shallow-depth facilities within the requested road, any qualified grading activity must be conducted in a manner that does not disturb the shallow-depth facilities. The licensing authority may require the owner or operator of the shallow-depth facilities to lower or otherwise move its facility in accordance with applicable law and the terms of its license. [2011, c. 72, §5 (NEW) .]

[2011, c. 72, §5 (NEW) .]

5-K. Exemption; unpaved private road grading. A person is exempt from the requirements of this section for any grading activities undertaken on private roads that meet the following criteria:

A. The grading activities are limited to the shaping, maintaining or scraping of a road surface or road shoulder to allow for proper drainage; and [2011, c. 588, §8 (NEW) .]

B. The depth of the grading activities is no deeper than 6 inches as measured from the road surface or shoulder of the road surface prior to the commencement of those grading activities. [2011, c. 588, §8 (NEW) .]

[2011, c. 588, §8 (NEW) .]

6. Liability of excavator. If an excavator complies with subsection 3 and if information pursuant to subsections 3-A and 4 is not provided within the time specified or if the information provided fails to identify the location of the underground facilities in accordance with subsection 4 then an excavator damaging or injuring underground facilities is not liable for any damage or injury caused by the excavation, except on proof of negligence.

[1999, c. 718, §8 (AMD) .]

6-A. Forfeitures.

[1999, c. 718, §9 (RP) .]

6-B. Failure to notify. An excavation that is made without the excavator providing any or all of the notices required by this section that results in any damage to an underground facility or facilities is prima facie evidence in any civil or administrative proceeding that the damage was caused by the negligence of the excavator.

[1999, c. 718, §10 (AMD) .]

6-C. Penalties. In an adjudicatory proceeding, the Public Utilities Commission may, in accordance with this subsection, impose an administrative penalty on any person who violates this subsection. The administrative penalty may not exceed \$500, except that, if the person has been found in violation of this subsection within the prior 12 months, the administrative penalty may not exceed \$5,000. Administrative penalties imposed pursuant to this subsection are in addition to any other remedies or forfeitures provided by law and any liability that may result from the act or omission constituting the violation. Before imposing any penalties under this subsection, the commission shall consider evidence of the record of the violator, including, to the extent applicable, the number of successful excavations undertaken by the violator or the number of locations successfully marked by the violator during the prior 12 months. The commission may require a person who violates any provision of this section to participate, at the expense of the violator, in an educational program developed and conducted by the system.

The Public Utilities Commission may impose administrative penalties for any of the following violations:

- A. Failure of an excavator to give notice of an excavation as required under subsection 3, except to the extent the excavator is exempt from the provisions of subsection 3 pursuant to other provisions of this section; [1999, c. 718, §11 (NEW).]
- B. Excavation by an excavator in a reckless or negligent manner that poses a threat to an underground facility; [1999, c. 718, §11 (NEW).]
- C. Excavation by an excavator that does not comply with the requirements of subsection 4-C, except to the extent the excavator is exempt from the provisions of subsection 4-C pursuant to subsection 5-C; [1999, c. 2, §27 (COR).]
- D. Failure of an underground facility operator to mark the location of the operator's underground facilities within the time limits required by subsection 4; [2001, c. 577, §9 (AMD).]
- E. Marking by an underground facility operator of the location of an underground facility in a reckless or negligent manner; or [2001, c. 577, §10 (AMD).]
- F. Failure of an excavator to comply with the requirements of subsection 5-C, 5-D, 5-E, 5-I or 5-J. [2011, c. 72, §6 (AMD).]

The commission shall establish by rule standards for when and at what level penalties must be assessed under this subsection. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 72, §6 (AMD); 2011, c. 588, §9 (AMD) .]

6-D. Penalty payment plan. The Public Utilities Commission shall allow a qualified person who is assessed an administrative penalty under subsection 6-C to pay the penalty through a payment plan. For purposes of this subsection, "qualified person" means a person who demonstrates to the Public Utilities Commission that the person is unable to pay the penalty in full or that paying the penalty in full will cause undue financial hardship. The Public Utilities Commission shall establish a schedule of payments over time that allows the person to pay the fine within that person's financial means.

[2011, c. 72, §7 (NEW) .]

7. Imprudent action. Compliance with this section does not excuse a person from acting in a careful and prudent manner nor does compliance with this section excuse a person from liability for damage or injury for failure to so act.

[1979, c. 362, §2 (NEW) .]

8. Effect on existing statutes or ordinances. Nothing contained in this section shall be construed to effect or impair any statute or ordinance requiring permits for excavation in a street or public highway.

[1979, c. 362, §2 (NEW) .]

9. Exceptions.

[1991, c. 437, §12 (AFF); 1991, c. 437, §9 (RP) .]

10. Further notice requirements.

[2011, c. 588, §10 (RP) .]

10-A. Further notice requirements. The following provisions govern excavations in areas where there are underground facilities owned or operated by a person who is not an underground facility operator and who is not a voluntary member of the system established under subsection 1-A.

A. In addition to other notice requirements under this section and except for an employee with respect to that employee's employer's facility, an excavator shall notify any person who is not a member of the system and has underground facilities in the area of the proposed excavation. This notice must be in writing or in person. [2011, c. 588, §11 (NEW) .]

B. If the underground facilities are located on private property, provide service to a single-family residence and are owned and operated by the owner of that property:

- (1) That landowner may mark the underground facilities in accordance with paragraph D;
- (2) The excavator may wait 3 business days from the date of notification to commence the excavation or may commence the excavation upon notification;
- (3) If the excavator waits 3 business days from the date of notification or until after the underground facilities are marked, if sooner, to commence excavation or if the markings made by the landowner pursuant to subparagraph (1) fail to identify the location of the underground facilities in accordance with paragraph D, an excavator damaging or injuring underground facilities is not liable for any damage or injury caused by the excavation, except on proof of negligence; and
- (4) If the excavator does not wait until the underground facilities are marked or 3 business days from the date of notification to commence excavation, whichever occurs earlier, the excavator is liable for all damages to the underground facilities as a result of the excavation. [2013, c. 557, §2 (AMD) .]

C. If the underground facilities are located on private or public land and are owned and operated by a person other than the owner of the property where the excavation is to occur:

- (1) The person who owns or operates the underground facilities shall mark the underground facilities in accordance with paragraph D; and
- (2) The excavator shall wait until the underground facilities are marked or 3 business days from the date of notification, whichever occurs earlier, before commencing the excavation.

If an excavator complies with paragraph A and subparagraph (2) and if information pursuant to paragraph D is not provided within the time specified or if the information provided does not identify the location of the underground facilities in accordance with paragraph D, an excavator damaging or injuring underground facilities is not liable for any damage or injury caused by the excavation, except on proof of negligence. [2011, c. 588, §11 (NEW) .]

D. A person who marks underground facilities under this subsection shall mark the location and size of the underground facilities in the proposed excavation area by marking the location of the facilities with stakes, with paint or by any other identifiable markings within 36 inches horizontally from the exterior sides of the underground facilities and if the depth is known the depth of the underground facilities. The person providing information shall respond no later than 2 full business days after receipt of the notice. It is the responsibility of the excavator to maintain those location markings until the excavations are completed. [2011, c. 588, §11 (NEW) .]

[2013, c. 557, §2 (AMD) .]

11. Enforcement. The Public Utilities Commission may adopt procedures necessary and appropriate to gather information and hear and resolve complaints concerning failure to comply with the provisions of this section.

[1999, c. 718, §12 (RPR) .]

12. Injunctions; costs. The owner or operator of an underground facility may request that the Public Utilities Commission issue a cease and desist order to prevent a person from undertaking an excavation that may result in damage to the underground facility. The Public Utilities Commission may issue a cease and desist order if the commission determines that the excavation or proposed excavation:

A. Is being conducted or is likely to be conducted in a negligent or unsafe manner; and [1997, c. 229, §2 (NEW).]

B. Is causing or is likely to cause damage to the underground facility. [1997, c. 229, §2 (NEW).]

If the owner or operator prevails in an action brought pursuant to this subsection, the owner or operator is entitled to an award of the costs of bringing the action, including reasonable attorney's fees.

[2003, c. 505, §4 (AMD) .]

13. Rules. The Public Utilities Commission may adopt rules necessary to implement this section. Except as otherwise specified in this section, rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 334, §3 (NEW) .]

14. Discovered facilities. When an underground facility is discovered during an excavation and the location of that facility was, prior to the discovery, unknown or unclear to the underground facility operator, the Public Utilities Commission may direct that operator to determine and map the location of the facility for a reasonable distance, as determined by the commission, from the point of discovery.

[2005, c. 334, §3 (NEW) .]

SECTION HISTORY

1979, c. 362, §2 (NEW). 1985, c. 111, §§1, 2 (AMD). 1989, c. 109, (AMD). 1991, c. 437, §§1-10 (AMD). 1991, c. 437, §12 (AFF). 1997, c. 229, §§1,2 (AMD). 1997, c. 631, §§1-4 (AMD). RR 1999, c. 2, §27 (COR). 1999, c. 718, §§1-13 (AMD). 2001, c. 577, §§1-11 (AMD). 2003, c. 373, §§1-3 (AMD). 2003, c. 505, §§3,4 (AMD). 2005, c. 334, §§1-3 (AMD). 2011, c. 72, §§1-7 (AMD). 2011, c. 588, §§1-11 (AMD). 2013, c. 405, Pt. B, §4 (AMD). 2013, c. 557, §§1, 2 (AMD). 2015, c. 213, §1 (AMD).

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