SPONSOR: Sen. McDowell & Rep. Paradee
Sen. Sokola; Reps. Brady, Heffernan

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 189

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO THE UNDERGROUND UTILITY AND SAFETY ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 803, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 803 Duties of operator.

It shall be duty of each operator:

(1) To participate in the approved notification center.

(2) To give written notice to such approved notification center which shall state:

a. The name of the operator;

b. The location of the operator's lines; and

c. The operator's office address (street, number and political subdivision) and the telephone numbers to which inquiries may be directed as to the location of such lines.

(3) To give like written notice within 5 working days after any of the matters stated in the last previous notice shall have changed.

(4) To respond to requests from an excavator or operator who identifies the site of excavation or demolition, or proposed excavation or demolition, for information as to the approximate location and type of the operator's utility lines in the area, not more than 2 working days after receipt of such requests.

(5) To inform excavators or operators who identify the site of excavation or demolition, or proposed excavation or demolition, not more than 2 working days after receipt of a request therefor, of the following:

a. If it is determined by an operator that a proposed excavation or demolition is planned within 5 feet of a utility line as measured in the horizontal plane and that the utility line may be damaged, the operator shall notify the person who proposes to excavate or demolish and shall physically mark the horizontal location of the utility line within 18 inches of the utility line on the ground by means of stakes, paint or other suitable means within 2 working days after the request. The operator shall also notify the person who proposes to excavate or demolish

as to the size of the utility line, the type of temporary marking provided and how to identify the markings. In the case of extraordinary circumstances, if the operator cannot mark the location within 2 working days, the operator shall, upon making such determination, notify the person who proposes to excavate or demolish and shall, in addition, notify the person of the date and time when the location will be marked;

b. The cooperative steps which the operator may take, either at or off the excavation or demolition site, to assist in avoiding damage to its lines;

c. Suggestions for procedures that might be followed in avoiding such damage;

d. If the operator has no utility line within 5 feet of the proposed excavation or demolition as measured in the horizontal plane and if a proposed excavation or demolition by blasting is not planned in such proximity to the operator's utility lines that the utility lines may be damaged, the operator shall advise the person who proposes to excavate or demolish that marking is unnecessary and that the person may therefore begin the excavation or demolition;

e. In marking the approximate location of utility lines, the operator shall follow the color coding described herein:

Electric power distribution and transmission — Safety red

Municipal electric systems — Safety red

Gas distribution and transmission — High visibility safety yellow

Oil and petroleum products distribution and transmission — High visibility safety yellow

Dangerous materials, product lines, steam lines — High visibility safety yellow

Telephone and telegraph systems — Safety alert orange

Police and fire communications — Safety alert orange

Cable television — Safety alert orange

Water systems — Safety precaution blue

Slurry systems — Safety precaution blue

Sewer systems — Safety green.

(6) To respond to requests from designers who identify the site of excavation or demolition, for information as to the approximate location and type of the operator's utility lines in the area within 15 working days of receipt of a request therefor.

(7) To inform designers who identify the site of excavation or demolition, or proposed excavation or demolition, not more than 15 working days after receipt of a request therefor of the information set forth at paragraph (5) of this section.

(8) Upon receipt of a request pursuant to paragraphs (4), (5), (6) and/or (7) of this section to assign such request an identifying number (which may be the same as the number assigned by the approved notification center in accordance with § 807(b)(5) of this title), inform the requestor of such number and maintain a record showing the name, address and telephone number of the requestor, the site to which the request pertains and the identifying number assigned to the request.

(9) To provide notification of any facilities damage caused by excavators to the Public Service Commission and the Attorney General's office within 15 working days.

Section 2. Amend § 807, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 807 Approved notification center.

(a) The approved notification center shall be Utilities Service Protection of Delmarva, Inc.

(b) The approved notification center shall:

(1) Receive and record information prescribed by § 803 of this title regarding the location of operators' utility lines within the State;

(2) Receive and record information prescribed by §§ 805 and 806 of this title regarding notice by excavators or designers of intended excavation or demolition activity;

(3) Promptly transmit to the operators identified in accordance with § 803 of this title, the information received as prescribed by paragraph (b)(2) of this section;

(4) Maintain records of each notice received in accordance with paragraph (b)(2) of this section for a period of not less than 6 years;

(5) Assign an identifying number to the notice prescribed in paragraph (b)(2) of this section;

(6) Notify those persons giving notice as prescribed by § 806 of this title, of the names of participating operators to whom the notice will be transmitted as prescribed by paragraph (b)(3) of this section and approved notification center's identifying number assigned (pursuant to paragraph (b)(5) of this section) to the notice prescribed in paragraph (b)(2) of this section;

(7) Provide a toll-free telephone number for use by any person providing notice as prescribed by §§ 803, 805 and 806 of this title;

(8) Identify persons who normally engage in excavation activities in this State;

(9) Notify the persons identified in paragraphs (b)(7) and (8) of this section and the general public as often as necessary to make them aware of:

a. The existence of the approved notification center;

b. The purpose and general requirements of this chapter;

c. How to learn the location of utility lines before excavation or demolition activities are begun; and

d. The toll-free telephone number provided as required by paragraph (b)(7) of this section.

(10) Promptly transmit to the appropriate contact of DNREC the information contained in the notice by excavators or designers of intended excavation or demolition activity as to any DNREC Regulated Site.

(11) Promptly notify the Public Service Commission and the Attorney General's office within 15 days of any notice of facilities damage received by the notification center.

Section 3. Amend § 810, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 810 Penalties.

It is unlawful and a misdemeanor for any person to do any act forbidden, or fail to perform an act required by this chapter.

(1) Except as provided in paragraph (2) of this section, whoever, by action or inaction, violates a provision of this chapter shall, for the first offense, be fined not less than $100 nor more than $500. For each subsequent like offense, such person shall be fined not less than $200 nor more than $1,000 for each violation.

(2) Operators of underground pipeline facilities, excavators, and the approved notification center shall, upon violation of any applicable requirements of 49 C.F.R. part 198, Subpart C [49 C.F.R. § 198.31 et seq.], be subject to civil penalties not to exceed $10,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations. In determining the amount of the fine, the court shall consider the nature, circumstances and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith in attempting to achieve compliance, ability to pay the fine and such other matters as justice may require.

(3) The Attorney General and the Public Service Commission shall review each notification of damage to facilities to determine any violations by operators, excavators or the notification center. Pursuant to that review, the Attorney

General or the Public Service Commission may impose penalties appropriate to the circumstances and gravity of the violation.

SYNOPSIS

The U.S. Department of Transportation has recently found Delaware to be non-compliant with enforcement of underground excavation violations. This jeopardizes federal funding for the Commissions pipeline safety program. Two principal reasons for this have been the lack of notification to State agencies and the lack of enforcement when damage is known. This bill updates Title 26, Chapter 8 by ensuring notification of excavation damage to the appropriate State agencies for potential penalties or other enforcement proceedings. It provides that either the Attorney General or the Public Service Commission may enforce penalties appropriate for the circumstances and gravity of the violation.

Author: Senator McDowell