

SPONSOR: Sen. Poore & Rep. Cooke
Sen. Hoffner

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 275
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 1

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

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

Section 1. Amend Chapter 8, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 801. Purpose; citation; construction.

(a) For the purposes of providing for the protection of the public health and safety, certain procedures are necessary to assure that persons performing excavation or demolition operations know, prior to commencing such operations, of the presence or location of underground utilities in the excavation or demolition area. Certain precautions must be taken to avoid injuries and damage to life, ~~limb~~ limb, and property, to avoid disruption and discontinuation of utility services to members of the public and to promote safe operations during excavation and demolition.

(b) This subchapter shall be known and may be cited as the "Underground Utility Damage Prevention and Safety Act." This chapter shall be liberally construed and applied to promote its underlying purposes and policies. (62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1.)

§ 802. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Abandoned" means no longer in service or use and physically disconnected from a facility.

~~(1)~~(2) "Approved notification center" ~~shall mean an organization identified by § 807 of this title and which complies with the requirements of § 807 of this title and is otherwise operated in accordance with the Federal Pipeline Safety Regulations codified at 49 C.F.R. Ch. 1, § 198.39.~~ means the communication system established within this state pursuant to § 807 of this title to:

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a. Provide a toll-free number, 811 access, or internet access for excavators or designers or any other person covered by this act to contact facility owner / operators and notify them of their intent to perform excavation.

b. Maintain an owner/operator/excavator information exchange system.

(3) “Backfill” means to fill the void created by excavating.

(4) “Business Day” means any day except a Saturday, Sunday, or legal holiday prescribed by Title 1, Chapter 5, §501 of Delaware Code, beginning at 12:01am and ending at 11:59pm.

(5) “Cathodic Protection” means the process of arresting corrosion on a buried or submerged structure by electrically reversing the natural chemical reaction. This includes installation of a sacrificial anode bed, use of a rectifier-based system, or any combination of these or similar systems. Wiring is installed between the buried or submerged structure and all anodes and rectifiers; wiring is also installed to test stations that are used to measure the effectiveness of the cathodic protection system.

(6) “Commission” means the Public Service Commission of Delaware.

(7) "Complex project" means a single project, or series of repetitive, small, short-term projects that are related in scope, that impact facilities over a long period of time or a large area.

(8) “Compliance” means adherence to the statute and its regulations.

~~(2)~~(9) “Damage” ~~shall mean~~ means any impact or exposure that may result in the need to repair an underground facility due to a weakening or the partial or complete destruction of the facility, including the protective coating, tracer wire, lateral support, cathodic protection, or the housing for the facility, device, or facility. ~~, but is not limited to:~~

~~a. The complete or partial destruction, dislocation or weakening of structure or lateral support of a utility line, or~~

~~b. The complete or partial penetration or destruction on any utility line, appurtenance, protective coating, covering, housing or other protective device, or~~

~~c. The complete or partial severance of any utility line.~~

(10) “Design Ticket” means a request for facility information as an aid to design a project that may impact utility facilities when initiated. No excavation can be performed under this ticket.

~~(3)~~(11) “Demolish or demolition” ~~shall mean~~ means any operation by which a structure or mass of material is wrecked, razed, rendered, moved or removed by means of any tools, equipment or discharge of explosives capable of damaging underground or submarine ~~utility lines.~~ facilities.

~~(4)~~(12) "Designer" ~~shall mean~~ means any architect, engineer or other person, acting either as an employer or employee, who prepares or issues a drawing for a construction or other project which requires excavation or demolition work.

(13) "Discrepancy" means a lack of compatibility between the facility marks and the physical environment.

~~(5)~~(14) "DNREC Regulated Site" ~~shall mean~~ means any parcel of land or portion thereof for which a final permit, remediation plan, institutional or administrative control, use restriction or similar limitation is imposed under the authority granted to the Department of Natural Resources and Environmental Control under Title 7 and for which due process opportunities have been provided.

~~(6)~~(15) "Emergency" ~~shall mean any condition constituting a clear and present danger to life, health or property by reason of escaping gas or petroleum products, exposed or broken wires, other breaks or defects in an operator's utility line or by reason of any disaster of artificial or natural causes.~~ means a sudden or unforeseen occurrence involving a clear or imminent danger to life, health, or property; the interruption of essential utility services; or the blockage of transportation facilities that requires immediate action.

(16) "Emergency Notice" means a communication to the approved notification center to alert the involved underground facility owners or facility operators of the need to excavate as a result of a sudden or unforeseen occurrence, or national emergency, involving a clear and imminent danger to life, health, environment, or property (including the interruption of essential utility services or the blockage of transportation facilities) that requires immediate excavation.

(17) "Engineering control" means man-made controls designed to isolate or contain in the ground waste or materials hazardous to human health and the environment. The term includes all of the following:

a. Hazardous, municipal, residual and radioactive waste landfills.

b. Vaults, repositories, and in-situ stabilization.

c. Caps on residual contamination.

d. Groundwater pump and treatment systems, leachate collection systems and monitoring and containment systems.

~~(7)~~(18) "Excavate" or "excavation" ~~shall mean~~ means any operation ~~in which earth, rock or other material in the ground is moved, removed or otherwise displaced or disturbed by means of any tools, equipment or explosives and includes, without limitation, grading, trenching, digging, dredging, ditching, drilling, augering, tunnelling, boring, backfilling, post pounding, driving objects into the ground, installation of form pins, hammering, scraping, cable or pipe plowing or driving, but~~ using non-mechanized or mechanized equipment, demolition, or explosives in the movement of earth, rock, or other material below existing grade. It includes augering, blasting, boring, digging, ditching, dredging,

drilling, driving-in, grading, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling. It does not include the surface cultivation of the soil for agricultural purposes, such as tilling, or patch-type paving where the same, including cutback, does not exceed 12 inches in depth measured from the surface of the pavement being patched. Unless visible and obvious evidence of the presence of an unmarked facility exists, driving non-metallic stakes by use of hand tools to a depth of 6 inches or less below existing grade does not constitute excavation.

(19) "Excavation Ticket" means a document developed by the approved notification center pursuant to an excavator's request for underground facilities to be marked. A ticket is valid for 12 business days after the day on which the ticket is transmitted by the Approved Notification Center to a member. On the 13th day, the ticket will expire, and an update, remark, or new excavation ticket shall be required.

~~(8)~~(20) "Excavator" ~~shall mean~~ means any person~~, including those acting either as an employer or employee, intending to perform or performing excavation or demolition work.~~ proposing to engage in or engaging in excavation or demolition work for that person or for another person.

(21) "Facility" means an underground or submerged conductor, pipe, or structure used to provide electric or communications service (including traffic control loops and similar underground or submerged devices); or an underground or submerged pipe used in carrying, providing, or gathering (typically between the wellhead and transmission line) gas, oil or oil product, sewage, water, or other liquid service (including irrigation systems), and appurtenances thereto.

(22) "Facility owner" or "facility operator" means the public utility or agency, political subdivision, municipality, authority, independent homeowner's association, mobile home park, rural electric cooperative, or other person or entity who owns, operates, or controls the operation of an underground facility. The term does not include the following:

a. A person serving the person's own property through the person's own facility if the person does not provide service to any other person.

b. A person using a facility which the person does not own or operate if the facility serves only that person's property.

(23) "Final design" means the engineering and construction drawings that are provided to a bidder or other person who is asked to initiate construction on the bid date or the date the project is set for construction in the absence of a bid.

(24) "Grade" means the surface of the earth (i.e. ground level) upon which a structure is built or prepared.

(25) "Locate" means to indicate the existence of a line or facility by establishing a mark through the use of stakes, paint, flagging, whiskers, or some other customary manner that approximately determines the location of that facility.

(26) "Locate request" means a communication between an excavator or designer and the approved notification center in which a request for locating underground facilities is processed.

(27) “Locator” means a person whose job is to locate facilities.

(28) “Meeting Ticket” means a request for any combination of locators, excavators, designers, or facility owners or facility operators, to assemble on the site and discuss the project or proposed work. Such assembly and discussion must occur on all complex projects. Excavation may not be performed on a meeting ticket. Excavation tickets may not be submitted for the project until after the Meeting Ticket.

(29) “Notice” means the timely communication by the excavator or designer to the approved notification center that alerts the involved underground facility owner or facility operator of the intent to excavate.

~~(9) “Operator” shall mean any person who furnishes or transports materials or services by means of a utility line.~~

(30) “Owner/Operator/Excavator Information Exchange System” means an interactive communication process or processes whereby all facility owners or facility operators that received an excavation notice from the approved notification center respond back to the approved notification center regarding the status or response that the facility owners or facility operators have made to the excavation notice; and whereby the approved notification center may post such notices for use by the excavator making the excavation notice.

~~(10)~~(31) “Person” ~~shall mean~~ means any individual~~, firm, joint venture, partnership, corporation, association, municipality, other political subdivision, state or federal governmental unit, department or agency, state cooperative association, joint stock association and shall include any assignee, trustee, receiver or personal representative thereof.~~ or public or private legal entity.

(32) “Positive Response” means communication with the excavator prior to excavation to ensure that all contacted facility owners or facility operators have located their underground facilities and have appropriately marked any potential conflicts within the areas of planned excavation.

(33) “Private Service” means a buried facility wholly owned and operated, on private property, by an entity or individual that is not in the business of providing a product or service via that buried facility.

(34) “Project owner” means any person who or which engages an excavator for any project which requires excavation work.

(35) “Public” means the general population or community at large.

(36) “Site” means the specific place denoted on the locate request when excavation or demolition work is being or is planned to be performed. A site should be denoted as a clearly defined bounded area, including relevant identifiable points of reference such as a specific address with a specific description as to the portion of the property, including descriptions such as front, back, left side as facing, right side as facing and directions such as North, South, East, West, or

variants thereof. Where possible, the points should also reference the size and radius or circumference of the excavation, utility pad or pedestal numbers, utility pole numbers, markers, landmarks and the like, and latitude and longitude.

(37) "Staff" means full-time professional employees of, and outside counsel and consultants retained by, the Public Service Commission, who render advice to the Commission. The Staff may participate in any Commission proceeding and may advocate particular positions concerning the issues raised in such proceeding and file supporting material and testimony for the Commission's consideration.

(38) "Test Holes" means the exposure of a facility by safe excavation practices to ascertain the precise horizontal and vertical position of underground facilities. Accepted safe excavation practices vary by local jurisdiction, but the preferred techniques include hand digging with extreme caution and vacuum excavation.

(39) "Ticket" means a numbered document issued by the Approved Notification Center to notify facility owners or facility operators that a person intends to perform excavation or demolition, or a designer has requested information on the location of underground facilities.

(40) "Tolerance zone" means the horizontal space within 24 inches of the outside wall or edge of a facility where special care is to be taken, when located by the facility owner or facility operator. No mechanized equipment will be allowed within the tolerance zone, except to remove the pavement or other manmade hard surface if used during the initial penetration only to the depth necessary and if an individual other than the equipment operator visually monitors the excavation activity. Vacuum excavation will be permitted within the tolerance zone.

(41) "Trenchless technology" means a family of methods, materials, and equipment capable of being used for the installation of new or replacement, or rehabilitation of existing, underground infrastructure that requires excavation with minimal disruption to surface traffic business and other activities. "Trenchless technology" includes:

a. Tunnelling.

b. Microtunnelling,

c. Horizontal directional drilling or directional boring.

d. Pipe ramming.

e. Pipe jacking.

f. Moling.

g. Horizontal auger boring.

h. Any other method for the installation of pipelines and cables below ground with minimal excavation.

~~(11)~~(42) "Underground pipeline facility operator" ~~shall mean~~ means an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, subject to the Natural Gas Pipeline Safety Act of 1968 (49

U.S.C. § 1671 et seq.) [repealed by Act July 5, 1994, P.L. 103-272], or used in the transportation of hazardous liquid subject to the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.) [repealed by Act July 5, 1994, P.L. 103-272]; underground pipeline facility operators include, without limitation, natural gas, propane gas, master meter, LP gas and interstate and intrastate gas and liquid distribution facility operators as defined by these acts.

~~(12) "Utility line" shall mean any item of personal property which shall be buried or placed below ground or submerged for use in connection with the storage or conveyance of water, sewage, electronic, cable television, telephonic or telegraphic communications, electric energy, oil, petroleum products, gas or other substances, and shall include, but not be limited to, pipes, sewers, conduits, cables, fiber optic conductors, valves, lines, wires, manholes, vaults, attachments and those portions of poles, pylons or other supports below ground or submerged.~~

~~(13) "Working day" shall mean every day, except Saturday, Sunday and state, federal and recognized operator holidays.~~

(43) "Vacuum Excavation" means a means of soil extraction through vacuum. Water or air jet devices are commonly used for breaking the ground.

(44) "White Lining" means the process by which an excavator identifies where proposed excavation will occur by marking extents of the excavation area or by drawing a polygon shape on a GIS map. That shape is delivered electronically by the approved notification center to its member facility operators

§ 803. Duties of ~~operator.~~ facility owners and facility operators.

It shall be the duty of each ~~operator~~ facility owner or facility operator:

(1) To participate in the approved notification center.

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

a. The name of the ~~operator;~~ facility owner or facility operator.

b. The location of the ~~operator's~~ facility owner's or facility operator's ~~lines; and~~ lines.

c. The ~~operator's~~ facility owner's or facility operator's office address (street, number and political subdivision) and the telephone numbers, email addresses, and points of contact to which inquiries may be directed as to the location of such ~~lines~~ facilities.

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

(4) To provide positive response to requests from an excavator or facility owner or facility 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 facility owner's or facility operator's facilities in the area, not more than 3 business days after receipt of such requests.

(5) To inform excavators or facility owners or facility operators who identify the site of excavation or demolition, or proposed excavation or demolition, not more than 3 business days after receipt of a request therefore, of the following:

a. If it is determined by a facility owner or facility operator that a proposed excavation or demolition is planned within 5 feet of a facility as measured in the horizontal plane and that the facility may be damaged, the facility owner or facility operator shall notify the person who proposes to excavate or demolish and shall physically mark the horizontal location of the facility within 24 inches of the facility on the ground by means of stakes, paint, or other suitable means. A facility owner or facility operator shall provide a positive response via the Owner/Operator/Excavator Information Exchange System upon receipt from the system of a notice of excavation, even if it has no affected facilities at the site. This response shall be made in a manner consistent with the procedures established by the approved notification system.

b. When marking the location of an underground facility, an owner–member shall use the current color codes established by the American Public Works Association (APWA) for marking underground facilities.

~~(4)~~(6) To respond to requests from ~~an excavator or operator who identifies~~ designers who identify 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.~~ facility owner's or facility operator's facilities in the area within 15 business days of receipt of a request. Information that may be provided includes, maps, digital files, GIS data, and plans. Physical markings are at the discretion of the facility owner.

~~(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)~~(7) Upon receipt of a request pursuant to paragraphs (4), (5), or (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.

(8) To, where contained on its continuing property records, identify the location of a known facility's point of connection to its facilities, where the point of connection is not owned or operated by the facility owner or facility operator; however, such identification shall not impose any liability upon the facility owner or facility operator for the accuracy of the other facility's identification. The facility owner or facility operator shall locate all underground facilities within the State highway rights of way unless maintained by another facility owner or facility operator that is franchised by the Delaware Department of Transportation.

(9) To participate in preconstruction meetings for a complex project, if requested.

(10) If a facility owner or facility operator fails to become a member of the approved notification center in violation of this act and a facility or facilities of such nonmember facility owner or facility operator are damaged by an excavator by reason of such excavator's failure to notify the facility owner or facility operator because the facility owner or facility operator was not a member of the approved notification center, such facility owner or facility operator shall have no right of recovery from the excavator of any costs associated with the damage to its facilities. This provision shall not be in limitation of any other rights of the excavator.

(11) To assure that persons employed by it (or by contractors doing business for it) to perform facility location shall be trained in applicable locating industry standards and practices.

(12) To follow all applicable laws and regulations for installing, maintaining, locating, and recording facilities. This includes the installation of tracer wire or some other means of detection, and an access point within a protective enclosure in the public right-of-way for any newly installed or fully replaced non-metallic pipes, including gas, water, and wastewater pipes.

~~(9)~~(13) Except as provided in paragraph ~~(10)~~(14) of this section, all operators shall provide notification to the Public Service Commission within 15 working days, or as soon as practicable thereafter if notification cannot be provided within 15 days, of any facilities damage caused by excavation which results in damage as defined in §

802~~(2)c.~~ of this title exceeding $3,000. Notification shall not be required for facilities damage to abandoned lines. The Public Service Commission may notify the Attorney General's office of such damage.

~~(10)~~(14) All underground pipeline facility operators shall provide notification to the Public Service Commission as soon as practicable of any facilities damage caused by excavation which results in damage as defined in § 802~~(2)~~ of this title to gas distribution and transmission lines, oil and petroleum products distribution and transmission lines, or dangerous materials, product lines or steam lines. (62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 405, § 1.)

§ 804. Additional duties of facility owners and facility operators who are also underground pipeline facility operators.

It shall be the duty of each underground pipeline facility owner or facility operator to:

(1) Participate in the approved notification center.

(2) Provide as follows for inspection of pipelines that such operator has reason to believe could be damaged by excavation activities:

a. The inspection must be done as frequently as necessary during and after the excavation activities to verify the integrity of the pipeline; and

b. In case of blasting, any inspection must include leakage surveys. (69 Del. Laws, c. 455, § 1.)

§ 805. Duties of designers.

It shall be the duty of each designer:

(1) To contact the approved notification center and obtain the identity of facility owners or facility operators whose facilities are listed, as required by § 803 of this title, in the area of the proposed excavation or ~~demolition;~~ demolition.

(2) To obtain the information prescribed in § 803(6) ~~or (7)~~ of this title from each facility owner or operator identified as required by § 803(2) of this ~~title;~~ title.

(3) To show upon the drawing the type of each ~~line,~~ facility, derived pursuant to the request made as required in paragraph (2) of this section, the name of the facility owner or facility operator and telephone number of the approved notification center, and instructions to "notify the approved notification center not less than ~~2 working days,~~ 3 business days, but no more than ~~10 working days,~~12 business days, prior to the excavation or demolition activities.

(4) To meet with each facility owner or facility operator who requests more information on the scope of the project.

(5) To make reasonable efforts to prepare the construction drawings to avoid damage and minimize interference with a facility owner's or facility operator's facilities in the construction area consistent with existing easements or otherwise consistent with this statute where no easement exists.

§ 806. Duties of excavators.

(a) Prior to undertaking any excavation or demolition activities, it shall be the duty of each excavator to:

(1) Ascertain the ~~telephone number~~ contact information of the approved notification ~~center;~~center.

(2) Notify the approved notification center not less than ~~2 working~~ 3 business days, but no more than ~~10 working~~ 12 business days, prior to the day of the commencement of such work of the following:

a. The name of the person notifying the approved notification ~~center;~~ center.

b. The name, address, email address, and telephone number of the ~~excavator;~~ excavator.

c. The specific location, starting date and description of the intended excavation or demolition ~~activity;~~activity. If exact location cannot be determined, white line marking is highly recommended.

d. All tickets shall conform to the following:

1. The location of excavation or demolition is limited to a maximum length of 1,320 continuous feet.

2. If a proposed excavation is of such size or length that the facility owner cannot mark it within 2 days, then an excavator shall notify the owner where excavation will first be made and the remainder shall be marked by the owner within a reasonable time thereafter. 3. On extensive or contiguous construction, an excavator and a facility owner may enter into working agreements regarding the time periods for marking the excavation.

4. Individual tickets are required for any lot or parcel that is non-contiguous.

(3) Ascertain the location and type of ~~utility lines~~ facilities, and information prescribed by § 803(5) of this title and the identifying number or numbers assigned (pursuant to § 807 of this title) by the approved notification center in response to the notice prescribed in paragraph (a)(2) of this ~~section;~~ section by contacting the Owner/Operator/Excavator Information Exchange System.

(4) Inform each person employed by the excavator at the site of such work of the information obtained pursuant to paragraph (a) (3) of this ~~section;~~ section. No excavation may begin until a positive response code of clear or no conflict or marked is received through the positive response system from each facility owner or facility operator through the Owner/Operator/Excavator Information Exchange System.

(5) Maintain in a prudent and careful manner all markings provided by facility owners or facility operators in accordance with the provisions of § 803 of this title and, in the event of the obliteration, destruction or removal of the markings, the excavator shall notify the approved notification center of the need for remarking of utility line by the ~~operators;~~ operators. In the event of the obliteration, destruction, or removal of the markings, the excavator shall notify the approved notification center and follow § 806(a)(2) of this title.

~~(6) Establish and maintain a mutually agreeable schedule of required utility locating with each involved operator to insure that the purpose of this chapter is met whenever the intended excavation or demolition will occur at multiple locations, on various dates, on a construction site or public works project with a duration in excess of 20 working days. Proper establishment and prudent, careful, compliance with such a schedule, after initial notice as required under paragraph (a)(2) of this section, shall be considered as notice required in paragraph (a)(2) of this section for the balance of the construction project;~~

(6) If visible and obvious evidence of the presence of an unmarked facility exists, the excavator shall attempt to designate the location of the facility prior to excavating through the means of a second request notification through the approved notification center Positive Response Information System. The facility owner or facility operator, or facility owner's or facility operator's subsequent agents designated for facility locations, will have a maximum of 2 hours to respond to this request and designate the location of the unmarked facility.

(7) Excavate prudently and carefully and to take all reasonable steps necessary to properly protect, support and backfill underground ~~utility lines~~ facilities. This protection shall include but may not be limited to hand digging, within the limits of the planned excavation or demolition, starting 2 feet of either side of the extremities of the underground ~~utility~~ facility line for other than parallel type excavations and at reasonable distances along the line of excavation for parallel type ~~excavations;~~excavations.

(8) Report immediately to the facility owner or facility operator any break in, or leak on, its ~~utility lines~~ facilities, any dent, gouge, groove, or other damage to such ~~lines~~ facilities or to the coating or cathodic protection made or discovered in the course of the excavation or demolition ~~work;~~work.

~~(9) Alert immediately the occupants of any premise as to any emergency that the excavator may create or discover at or near such premises.~~

(9) Alert immediately the occupants of any premise as to any emergency that the excavator may create or discover at or near such premises. Immediately notify 911 and the facility owner or facility operator if damage to a facility by the excavator results in the escape of any flammable, toxic or corrosive gas or liquid, or other event that endangers life, health, or property. The excavator shall take reasonable measures, based upon the excavator's

knowledge, training, resources, experience, and understanding of the situation to protect the excavator, the excavator's employees, and those in immediate danger, and the environment, until the facility owner or facility operator or emergency responders have arrived, and shall remain on site to convey pertinent information to responders until directed to leave.

(10) No excavation may begin until a positive response code of clear or no conflict or marked is received through the positive response system from each facility owner or facility operator through the Owner/Operator/Excavator Information Exchange System. The scheduled notification date shall exclude the date upon which notification was received by the approved notification center and shall exclude notification received on a Saturday, a Sunday, or a holiday, and such notifications shall be processed by the approved notification center as of the first business day following receipt.

(11) In the case of complex project, a preconstruction meeting shall take place at any time prior to the commencement of excavation, and the excavator, facility owner or facility operator, designer, or the facility owner's or facility operator's agents, shall attend the meeting. Notice of the meeting shall be given sufficiently in advance so as to permit attendance, either in person or otherwise, by the parties above, and shall include information sufficient to identify the scope of the work. Any facility owner or facility operator with facilities at the site may request a meeting with the excavator and such a meeting shall be held between the excavator and the facility owner or facility operator requesting the meeting.

(12) To exercise due care; and to take all reasonable steps necessary to avoid injury to or otherwise interfere with all facilities where positions have been provided to the excavator by the facility owners or facility operators pursuant to this act. The excavator shall employ prudent techniques, which may include test holes, to ascertain the precise location of such facilities.

(13) An excavator shall assist a facility owner or facility operator in determining the involvement of the facility owner's or facility operator's facilities by disclosing additional available information requested by the facility owner or facility operator, including dimensions and the direction of the proposed excavation.

(14) If using horizontal directional drilling (HDD), the excavator shall use the best practices published by the current best practices.

(15) If, after receiving information from the approved notification center or directly from a facility owner or facility operator, the excavator decides to change the location, scope or duration of a proposed excavation, the excavator shall notify the approved notification center of the change.

(16) Excavators are encouraged to use test holes to ascertain the precise location of all facilities within 5 feet of the excavation and shall take extra precautions within the tolerance zone, as outlined in § 802 of this title. Excavators shall use test holes to ascertain the precise location of all facilities that contain hazardous or flammable substances within 5 feet of marked facilities such as natural gas or petroleum pipelines. If a test hole is dug and the facility is not found, the excavator shall cease excavation and notify the facility owner or facility operator of this fact immediately.

(b) The requirements of paragraphs (a)(1) through ~~(5)~~(6), (10), (11), (13), and (15) of this section shall not apply to an excavator performing excavation or demolition work in any emergency. However, excavators performing excavation or demolition activities in an emergency shall notify the approved notification center at the earliest practicable moment of the information prescribed in paragraph (a)(2) of this section. (69 Del. Laws, c. 455, § 1; 70 Del. Laws, c. 186, § 1.)

§ 807. Approved notification center.

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

(a) Utilities Service Protection Center of Delmarva, Inc. (USPCD) shall provide for the approved notification center.

(b) The approved notification center shall:

(1) Receive and record information prescribed by § 803 of this title regarding the location of facility owners' or facility operators' ~~utility lines~~ facilities within the ~~State;~~ 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;~~ activity.

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

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

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

b. The purpose and general requirements of this ~~chapter;~~ chapter.

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

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) Determine the maximum geographic area that shall constitute a valid single notification and to determine when multiple notifications shall be required of any person, including the method, type, and number of notifications in a complex project.

(12) The duties of the approved notification system are the duties set forth in this section, and the duties assigned to other parties in this act are the duties of those parties and are not imputed to the approved notification center. The approved notification center is not responsible for the accuracy of the information provided to it by a third-party concerning excavation notification, nor is it responsible for what is done with that information when it is provided to facility owners or facility operators. The approved notification center is not liable to any person for damages arising out of its non-negligent actions in furtherance of the duties imposed under this act, and then is liable only if its negligence was the proximate cause of the damages claimed.

(13) All requests for information shall be reviewed and provided in accordance with the procedures established by the approved notification center's board of directors or approved by them. (62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1; 72 Del. Laws, c. 323, § 3; 81 Del. Laws, c. 405, § 2.)

§ 808. Exemptions.

(a) No penalties provided for in § 810 of this title shall apply to any excavation or demolition done by the owner of a private residence when such excavation or demolition is made entirely on the land on which the private residence is situated and provided there is no encroachment on any facility owner's or facility operator's rights-of-way or easement. However, this exemption shall have no effect on the civil liability of such private residence owner pursuant to § 811 of this title.

(b) No penalties provided for in § 810 of this title apply to any surface cultivation of the soil for agricultural purposes such as tilling, plowing, disking, etc. provided that it does not infringe on public rights of way or easements. (69 Del. Laws, c. 455, § 1.)

§ 809. Injunction; mandamus.

Whenever it appears that any person has engaged in, is engaging ~~in~~ in, or is about to engage in excavation or demolition in a manner contrary to safe practices, thereby posing a threat or potential threat, of injury or damage to life, ~~limb~~ limb, or property, not necessarily limited to ~~utility lines~~ facilities, or has otherwise violated, is about to ~~violate~~ violate, or is violating any provision of this chapter, the Attorney General or any facility owner or facility operator or owner of ~~said utility line~~ an affected facility may institute an action for the purpose of having such excavation or demolition stopped or prevented, either by mandatory or prohibitive injunction, ~~mandamus~~ mandamus, or for other relief including interim equitable relief and punitive damages, in a court of competent jurisdiction in the county in which the excavation or demolition has occurred, is ~~occurring~~ occurring, or is about to occur, or in which the defendant's or respondent's principal place of business is located. The procedure for all such proceedings shall be as provided in the rules of procedure in the court where said action is commenced or as established by the usual practice and procedure in said court. The court may join as parties any and all persons necessary to make its judgment or processes effective. (62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1.)

§ 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~~ may, for the first offense, be ~~fined~~ assessed a civil penalty not less than $100 nor more than ~~$500~~ $1000. For each subsequent like offense, such person ~~shall~~ may be ~~fined~~ assessed a civil penalty not less than $200 nor more than ~~$1,000~~ $5,000 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 failure to perform an act required by this chapter or 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 according to the guidelines in paragraphs (1) and (2) of this section above.~~

~~(4) Any civil penalty imposed pursuant to this subchapter shall not prevent any party from obtaining civil damages for personal injury or property damage in private actions.~~

(2) Facility owners and facility operators, excavators with a business license, and the approved notification center shall, upon violation of this Act, be subject to the following maximum civil penalties:

a. $1,000,000 for violations that result in a death.

b. $500,000 for violations causing damage to a structure.

c. $100,000 for all other violations.

In determining the amount of the civil penalty, consideration shall be given to the nature, circumstances and gravity of the violation, degree of culpability, history of prior violations, effect on ability to continue to do business, any good faith in attempting to achieve compliance, and other relevant factors.

(3) Any civil penalty imposed pursuant to this Act does not prevent any party from obtaining civil damages for personal injury or property damage in private actions.

(4) In all violations, except those resulting in death or damage to a structure, the Commission may determine that training provided by the approved notification center may be substituted in lieu of a civil penalty. For all violations resulting in civil penalties, training provided by the approved notification center shall also be required.

(5) Except in so far as may be necessary to implement §116 of this title, all civil penalties related to this section shall be used by the Commission for one or more of the following purposes:

a. Public awareness programs.

b. Training and education programs for members and violators of this Act.

c. Improvements to the approved notification center.

d. Reduce the cost to members of the approved notification center.

(6) Any cost associated with a civil penalty to a facility owner or facility operator may not be collected by that facility owner or facility operator through rates to its customers.

(7) For violations that result in death or damage to a structure, the Attorney General may take enforcement authority pursuant to this Act. For all other violations involving civil penalties and violations where the Attorney General provides an affirmative waiver of enforcement authority, the Commission shall be the enforcement authority pursuant to this Act. The Commission has the authority to determine if any actions shall be taken as a result of violations of this Act, except in the event of death or damage to a structure, and to determine if training and education can be substituted in lieu of civil penalties. (62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1; 81 Del. Laws, c. 405, § 3.)

§ 811. Civil liability.

(a) Obtaining information as required by this chapter does not excuse any person making any excavation or demolition from doing so in a careful and prudent manner, nor shall it excuse any person from liability for any damage or injury resulting from the excavation or demolition.

(b) If the information required to be provided by facility owners or facility operators pursuant to § 803 of this title is not provided in accordance with the terms thereof, any person damaging or injuring underground facilities of such facility owner or facility operator shall not be liable for such damage or injury except on proof of negligence.

(c) Failure by DNREC to notify or otherwise contact an excavator or designer prior to a properly noticed excavation or demolition at any DNREC Regulated Site shall not relieve such excavator or designer from complying with all applicable federal, state, ~~county~~ county, or municipal laws or regulations, nor shall it create any liability in DNREC for any damage or injury resulting from any such excavation or demolition. (62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1; 72 Del. Laws, c. 323, § 4.)

§ 813. Effective date. The effective date of this chapter shall be January 1, 1995.