

# **TITLE 39**

## **Public Utilities and Carriers**

### **CHAPTER 39-1.2**

#### **Excavation Near Underground Utility Facilities**

**Sections §39-1.2-1 to §39-1.2-14**

**§ 39-1.2-1. Definitions.**

As used in this chapter:

- (1) "Abandoned utility facilities" means any known underground or submerged utility line or facility that has been permanently taken out of service. For excavation purposes, the abandoned underground utility facilities should always be considered to be active utility service.
- (2) "Administrator" means the administrator of the division of public utilities and carriers.
- (3) "Approximate location of underground facilities" means a strip of land extending not more than one and one-half (1 1/2) feet on either side of the underground facilities.
- (4) "Association" means the group of public utilities formed pursuant to § 39-1.2-4 for the purpose of receiving and giving notice of excavation activity within the state.
- (5) "Damage" means and includes, but is not limited to, the substantial weakening of structural or lateral support of a utility line, penetration, or destruction of any utility line protective coating, housing, or other protective device or the severance, partial or complete, of any utility line.
- (6) "Demolition" means the wrecking, razing, rending, moving, or removing of any structure.
- (7) "Excavation" means an operation for the purpose of movement or removal of earth, rock, or other materials in or on the ground, or otherwise disturbing the subsurface of the earth, by the use of powered or mechanized equipment, including, but not limited to: digging, blasting, auguring, back filling, test boring, drilling, pile driving, grading, plowing in, hammering, pulling in, trenching, and tunneling; excluding the movement of earth by tools manipulated only by human or animal power and the tilling of soil for agricultural purposes.
- (8) "Governing authority" means the permit-issuing authority.
- (9) "Immediate danger to life and health" means likely to cause death or immediate or delayed permanent adverse health effects or prevent escape from such an environment.

(10) "Inactive utility facilities" means any underground or submerged utility facilities line or facility that has been temporarily taken out of service with the expectation of becoming usable in the future.

(11) "Person" means an individual, partnership, corporation, association, or a public utility, including a person engaged as a contractor by a public agency and including a public agency.

(12) "Public agency" means the state or any political subdivision thereof, including any governmental agency.

(13) "Public utility" means the owner or operator of underground facilities for furnishing electric, gas, telephone, or water service as defined in § 39-1-2(20); and also means and includes, for the purposes of this chapter only, electric transmission companies and nonregulated power producers, as defined in § 39-1-2(13) and (19); any cable television service; and any water company that voluntarily becomes a member of the association provided for under § 39-1.2-4.

(14) "Public utility facilities" means the underground plant and equipment owned and operated by a public utility for the purpose of furnishing electricity, gas, water, cable television or telephone service; including the underground plant and equipment owned and operated by any water company, not subject to regulation by the administrator of the division of the public utilities, that voluntarily joins the association provided for under § 39-1.2-4. Utility facilities shall include active, newly installed, and inactive or abandoned utility facilities.

#### **§ 39-1.2-1.1. Findings.**

The general assembly finds and declares that:

(1) Safety and the need for an effective damage prevention program for underground utility facilities should include participation from all stakeholders including excavators and utility companies;

(2) To develop a process for fostering and promoting the use of an effective damage prevention program, by all appropriate stakeholders, technologies need to be improved that enhance communications, underground pipeline locating capability, and gathering and analyzing information about the accuracy and effectiveness of underground facility locating programs;

(3) Many public, private and municipal utilities are located underground including, but not limited to, gas, water, electric, cable television, telephone and sewers. Excavation in the vicinity of such utilities can be dangerous and the utilities should be marked appropriately to avoid damage, injury or public emergency; and

(4) All utilities whether public, private or municipal should strongly consider participation in the utility damage prevention program known as Dig Safe System, Inc. to insure the highest level of safety and awareness of utility facility locations.

### **§ 39-1.2-2. Excavation or demolition near public utility.**

No person, public agency, or public utility shall engage in excavation in approximate location of public utility facilities or discharge explosives or demolish a structure containing a public utility facility without having first ascertained in the manner prescribed in this chapter the location of all public utility facilities or public utilities in the area or the absence thereof.

### **§ 39-1.2-3. Annual report by public utilities.**

All public utilities of the state, owning and operating underground facilities shall file annually, with the administrator, a report setting forth the total mileage of underground facilities, excluding service connections, including the title, address, and telephone number of its representatives designated to receive the notice required by § 39-1.2-5.

### **§ 39-1.2-4. Public utilities association – Creation.**

All public utilities of the state, owning and operating underground facilities, shall, with the assistance of the administrator, jointly participate in an association providing for mutual receipt of notification required by §§ 39-1.2-2 and 39-1.2-5. The cost of the operation of the association shall be apportioned equitably among all public utilities whose underground facilities are registered with the administrator.

### **§ 39-1.2-5. Notice of excavation.**

(a) Except as provided in § 39-1.2-9, any person, public agency, or public utility responsible for excavating within one hundred feet (100') or for discharging explosives within one hundred feet (100') of a public utility facility shall notify the association of the proposed excavation or discharge at least seventy-two (72) hours, excluding Saturdays, Sundays, and holidays, but not more than thirty (30) days before commencing the excavation or discharge of explosives. Actual excavation must thereupon commence within thirty (30) days. Each public utility shall, upon receipt of each notice of excavation, mark within seventy-two (72) hours or, where applicable in accordance with § 39-1.2-12, re-mark within forty-eight (48) hours, the location of all underground facilities.

(b) Each excavator shall provide a description of the excavation location that shall include:

- (1) The name of the city or town where the excavation will take place;
- (2) The name of the street, way, or route number where appropriate;
- (3) The name of the streets at the nearest intersection to the excavation;
- (4) The numbered address of buildings closest to the excavation; and

(5) Any other description that will accurately define the excavation location, including landmarks and utility pole numbers.

(c) If an excavator determines that a public utility facility has been mismarked, the excavator may notify the association and the appropriate public utility shall re-mark no later than three (3) hours after receipt of notification from the association. The failure to mark or re-mark the location of all underground facilities upon each notice of excavation shall constitute a separate violation of this chapter. Where an excavation is to be made by a contractor as part of the work required by a contract with the state or with any political subdivision thereof or other public agency for the construction, reconstruction, relocation, or improvement of a public way or for the installation of a railway track, conduit, sewer, or water main, the contractor shall be deemed to have complied with the requirements of this section by giving one such notice to the association as required by this section, except when unanticipated obstructions are encountered, setting forth the location and the approximate time required to perform the work involved. In addition, the initial notice shall indicate whether the excavation is anticipated to involve blasting and, if so, the date on which and specific location at which the blasting is to occur. If after the commencement of an excavation it is found there is an unanticipated obstruction requiring blasting, the excavator shall give at least four (4) hours notice to the association before commencing the blasting. When demolition of a building containing a public utility facility is proposed, the public utility or utilities involved will be given written notice by registered mail at least ten (10) days prior to the commencement of the demolition of the building. All notices shall include the name, address, and telephone number of the entity giving notice; the name of the person, public agency, or public utility performing the work; and the commencement date and proposed type of excavation, demolition, or discharge of explosives. The association shall immediately transmit the information to the public utilities whose facilities may be affected. An adequate record shall be maintained by the association to document compliance with the requirements of this chapter.

#### **§ 39-1.2-6. Compliance by public agencies.**

Any permit issued by a public agency for excavation, demolition, or the discharge of explosives shall be issued in compliance with this chapter.

#### **§ 39-1.2-7. Marking of underground utilities and excavations.**

(a) A public utility served with the notice in accordance with § 39-1.2-5 shall, within seventy-two (72) hours, exclusive of Saturdays, Sundays, and legal holidays, of the receipt of the notice, unless otherwise agreed between the person or public agency performing the work and the public utility, mark the approximate location of the underground utility facilities.

(b) Prior to notifying the association, any excavator must premark the area of proposed excavation in a manner that will enable the owner of the public utility facilities to identify the boundaries of the proposed excavation activities, except that premarking shall not be required if the proposed excavation will be continuous and exceed five hundred feet (500') in length, or if such marks may reasonably interfere with traffic or pedestrian control or are misleading to the general public.

(c) A public utility shall mark any of their underground utility facilities that are located within fifteen feet (15') of the exterior limits of the premarked excavation area.

(d) For the purposes of this chapter, the approximate location of underground utility facilities shall be marked with stakes, paint, or other physical means as may be necessary to ensure a distinctive mark. The public utility shall follow the color coding prescribed in this section.

UTILITY AND TYPE OF PRODUCT	SPECIFIC GROUP IDENTIFYING COLOR
Electric power distribution and transmission	Safety Red
State and municipal electric systems	Safety Red
Gas distribution and transmission	Visibility Safety Yellow
Dangerous materials, product line	High Visibility Safety Yellow
Telephone and telegraph systems	Safety Alert Orange
Water systems	Safety Precaution Blue
Cable antenna television	Safety Alert Orange
Premark	White

(e) In the event the excavator shall damage the underground public utility facilities as the result of an incorrect marking by the public utility, the excavator shall not be responsible for the resulting damage.

**§ 39-1.2-8. Notice in emergency.**

(a) In the event of any emergency posing a threat to life, public health, public safety or property, or which may require immediate correction in order to continue the operation of a major industrial plant, or to assure the continuity of public utility service, excavation, maintenance, or repairs may be made without using explosives upon notice and advice thereof given to the association as soon as it is determined that an emergency exists. The excavator shall thereafter employ any means necessary, excluding blasting, to insure that the underground public utility facilities in the area of the excavation shall not be damaged.

(b) In the event of an emergency, public utilities shall notify the excavator, at the telephone number provided to the association by the excavator, within two (2) hours upon receipt of notice as to whether the public utility has any facilities in the vicinity of the proposed excavation. If the public utility has any facilities in the vicinity of the proposed excavation, the public utility shall mark out their facilities no later than three (3) hours after receipt of notice from the association.

**§ 39-1.2-9. Municipal ordinances.**

This chapter shall not be construed to authorize, affect, or impair local ordinances, charters of other provisions of law requiring permits to be obtained before excavating or tunneling in a public street or highway, or to construct or demolish buildings or other structures on private property, nor construed to grant any person or public agency any rights not specifically provided

by this chapter. A permit issued by a public agency shall not be deemed to relieve a person from the responsibility for complying with the provisions of this chapter. The failure of any person, who has been granted a permit, to comply with the provisions of this chapter, shall not be deemed to impose any liability upon the public agency issuing the permit. Any disagreement between a public utility company and a person shall be referred to the administrator whose order shall be binding upon the parties.

#### **§ 39-1.2-10. Procedures at work site.**

Any person or public agency excavating, tunneling, or discharging explosives shall exercise reasonable care when working in close proximity to the underground public utility facilities of any public utility. Further, when the facilities are to be exposed, only nonmechanical means shall be employed to locate the facility and such support, as may be reasonably necessary for the protection of the facilities, shall be provided in and near the work area.

#### **§ 39-1.2-11. Damage – Notice to public utility.**

(a) Upon the occurrence of any contact with, or damage to, any pipe, cable, or its protective coating, or any other underground facility of a public utility, the appropriate and/or affected public utility shall be notified immediately by the person or public agency responsible for the operation causing the contact or damage prior to backfilling the excavation. Upon the receipt of the notice, the public utility shall immediately dispatch personnel to the subject location to effect temporary or permanent repair of the damage. Under no circumstances shall the excavator backfill or conceal the damaged area until the public utility arrives at the subject location. Upon the occurrence of a serious electrical short, or the escape of dangerous fluids or gases from a broken line, the person or public agency responsible for the operations causing the damage shall call 911 if the damage presents an immediate danger to life and health of employees or pedestrians in the surrounding area. In the event of an immediate danger to life and health occurrence, the area shall be evacuated until proper emergency services arrive.

(b) Any person, public agency, or public utility shall report all suspected violations of this chapter to the division of public utilities within thirty (30) days after learning of the circumstances constituting the suspected violation.

#### **§ 39-1.2-12. Maintenance of utility markings.**

After a public utility has marked its underground facilities in accordance with the provisions of § 39-1.2-7, the excavator shall be responsible for maintenance of the designated markings. In the event the markings are obliterated, destroyed, or removed, the utility shall, within forty-eight (48) hours following the receipt of a request, remark the location of its facilities.

### **§ 39-1.2-13. Penalties.**

(a) Any person or utility who violates any provision of this chapter shall be subject to a civil penalty of no more than three hundred fifty dollars (\$350) for the first offense and not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) for any subsequent offense within a twelve (12) month period. The administrator of the division of public utilities shall assess the civil penalty against the person or utility who is determined to have committed the violation. All penalties recovered shall be paid into the general fund of the state. This chapter shall not be construed to affect any civil remedies for personal injury or property damage (including underground utilities), except as otherwise specifically provided for in this chapter.

(b) Any contractor found in violation of this chapter who, after due process of law, fails to satisfy any such fines levied pursuant to this chapter shall be ineligible to bid on or be awarded any municipal, quasi-municipal, state, state funded, state regulated or state subsidized construction and/or public works contracts.

#### **§ 39-1.2-13.1. Powers of administrator.**

In enforcing the provisions of this chapter with respect to persons who are not public utilities, the administrator may:

- (1) Conduct an investigation in connection with violations involving the excavation or demolition of public utility facilities; and
- (2) For purposes of an investigation permitted under this section, require any person, which for purposes of this section only may be defined to include an individual, partnership, corporation, association or agent thereof, involved in the excavation or demolition of a public utility facility to appear at such time and place as the administrator may designate, then and there under oath to produce for the use of the administrator any and all documents and other such information relating directly to the incident as the administrator may require; and
- (3) Require the attendance of any person as provided in this section, provided however that the administrator shall issue a notice setting the time and place when the attendance is required and shall cause the notice to be delivered or sent by registered or certified mail to the person at least fourteen (14) days before the date fixed in the notice for the attendance. In the event that any person fails to receive or accept notice by mail or fails to produce information requested, the administrator is empowered to issue a subpoena in a manner consistent with § 39-1-13.

If any person receiving notice pursuant to this provision neglects to attend or remain in attendance so long as may be necessary for the purposes which the notice was issued, or refuses to produce information requested, any justice of the Superior Court for the county within which the inquiry is carried on or within which the person resides or transacts business, upon application of either the administrator or the person subject to the notice, shall have jurisdiction to hear and consider on an expedited basis the request and if deemed necessary and relevant to the consideration of the incident at issue, may issue an appropriate order. Any failure to obey the

order of the superior court may be punished by the court as contempt thereof. The administrator may, after notice and opportunity for a fair and prompt hearing, and a finding that the person was in whole or in part responsible for the incident based upon clear and convincing evidence, impose a penalty or fine not in excess of penalties set forth in § 39-1.2-13.

This section shall not limit or effect any powers conferred upon the administrator pursuant to Title 39 as such powers relate to public utility companies or agents thereof.

**§ 39-1.2-14. Severability.**

If any provision of this chapter or the applicability thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall not be affected thereby.