

# **NEW JERSEY BOARD OF PUBLIC UTILITIES**

## **Underground Facilities: One-Call Damage Prevention System**

### **N.J.S.A. 48:2-73 et seq. and enabling rules – N.J.A.C. 14:2**

#### **TITLE 48. PUBLIC UTILITIES**

#### **CHAPTER 2. DEPARTMENT OF PUBLIC UTILITIES; BOARD OF COMMISSIONERS**

#### **ARTICLE 9. EMERGENCIES AND DAMAGE PREVENTION**

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#### **§ 48:2-73. Short title**

Sections 1 through 19 of this act shall be known and may be cited as the "Underground Facility Protection Act."

#### **§ 48:2-74. Findings, declarations, determinations**

The Legislature finds and declares that damage to underground facilities caused by excavation and the discharge of explosives poses a significant risk to the public safety; that such damage to underground natural gas facilities poses a substantial risk to the public safety; and that the implementation of a comprehensive One-Call Damage Prevention System can substantially reduce the frequency of damage caused by these activities.

The Legislature therefore determines that it is in the public interest for the State to require all operators of underground facilities to participate in a One-Call Damage Prevention System and to require all excavators to notify the One-Call Damage Prevention System prior to excavation or demolition.

The Legislature further determines that the Board of Public Utilities is the appropriate State agency to designate the operator of, and provide policy oversight to, the One-Call Damage Prevention System and enforce the provisions of this act.

## **§ 48:2-75. Definitions**

As used in this act:

"Board" means the Board of Public Utilities;

"Business day" means any day other than Saturday, Sunday, or a nationally or State recognized holiday;

"Damage" means any impact or contact with an underground facility, its appurtenances or its protective coating or any weakening of the support for the facility or protective housing, including, but not limited to a break, leak, dent, gouge, groove, or other damage to the facility, its lines, or their coating or cathodic protection.

"Emergency" means any condition constituting a clear and present danger to life, health or property caused by the escape of any material or substance transported by means of an underground facility or the interruption of a vital communication or public service that requires immediate action to prevent or mitigate loss or potential loss of the communication or public service, or any condition on or affecting a transportation right-of-way or transportation facility that creates a risk to the public of potential injury or property damage;

"Excavate" or "excavating" or "excavation" or "demolition" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosive, and includes but is not limited to drilling, grading, boring, milling to a depth greater than six inches, trenching, tunneling, scraping, tree and root removal, cable or pipe plowing, fence post or pile driving, and wrecking, razing, rending, or removing any structure or mass material, but does not include routine residential property or right-of-way maintenance or landscaping activities performed with non-mechanized equipment, excavation within the flexible or rigid pavement box within the right-of-way, or the tilling of soil for agricultural purposes to a depth of 18 inches or less;

"Excavator" means any person performing excavation or demolition and may include a contractor having oversight for an excavation or demolition to be performed by rented, operated equipment under the contractor's on-site direction provided the contractor contacts the One-Call Damage Prevention System in the contractor's name, thereby assuming responsibility and liability, to give notice of the intent to engage in excavation or demolition work in that manner;

"Hand digging" means any excavation involving non-mechanized tools or equipment, including but not limited to digging with shovels, picks and manual post-hole diggers;

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"Mechanized equipment" means equipment powered by a motor, engine, or hydraulic, pneumatic or electrical device, including but not limited to trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, and other equipment used for plowing-in cable or pipe, but does not include tools manipulated solely by human power;

"One-Call Damage Prevention System" means the communication system established pursuant to section 4 [C.48:2-76] of this act;

"Operator" means a person owning or operating, or controlling the operation of, an underground facility, but shall not include a homeowner who owns only residential underground facilities, such as an underground lawn sprinkler system or an underground structure for a residential low-voltage lighting system;

"Person" means any individual, firm, joint venture, partnership, corporation, association, State, county, municipality, public agency or authority, bi-state or interstate agency or authority, public utility, cooperation association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof;

"Public entity" means any federal, State, county or municipal entity responsible for issuing road opening, building, blasting, demolition or excavation permits;

"Site" means the specific place where excavation work is performed or to be performed and shall be identified by street address referenced to the nearest intersecting street and subdivision name, if applicable, as well as by lot and block number, if available and by kilometer or mile marker for railways;

"State department or agency" means any department, public authority, public agency, public commission, or other political subdivision of the State, including any county, municipality or political subdivision thereof; and

"Underground facility" means any public or private personal property which is buried, placed below ground, or submerged on a right-of-way, easement, public street, other public place or private property and is being used or will be used for the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, or traffic control, or for the transportation of a hazardous liquid regulated pursuant to the "Hazardous Liquid Pipeline Safety Act of 1979" (49 U.S.C. app. § 2001 et seq.), but does not include storm drains or gravity sewers.

#### **§ 48:2-76. One-Call Damage Prevention System, established; rules, regulations**

The Board of Public Utilities shall establish a One-Call Damage Prevention System pursuant to the provisions of this act, and may adopt, pursuant to the "Administrative Procedure Act", P.L.1968, c. 410 (C. 52:14B-1 et seq.), such rules and regulations as it deems necessary to implement the provisions of this act. This system shall be a single Statewide 24-hour, seven-day-a-week notification center which shall:

a. Receive and record the notice of intent to excavate provided by excavators pursuant to subsection a. of section 10 [C.48:2-82] of this act;

b. Assign a confirmation number to each notice of intent to engage in an excavation, inform the excavator of the confirmation number, and maintain a register showing the name, address, and telephone number of the excavator, the site to which the notice pertains, and the assigned confirmation number;

c. Promptly transmit to the appropriate operators the information received from an excavator regarding any intended excavation in areas where the operators have underground facilities;

d. Maintain a record of each notice of intent received pursuant to subsection a. of this section for a period of seven years from the date of notice; and

e. Provide to the excavator the names of the operators who will be notified by the One-Call Damage Prevention System of the intended excavation.

### **§ 48:2-77. Operation of One-Call Damage Prevention System**

a. Five years after the effective date of this act, the board shall designate, through an appropriate administrative mechanism, a person to operate the One-Call Damage Prevention System. The board may, as necessary, adopt rules establishing the process by which it shall select a person to operate the system.

b. The board shall designate the Garden State Underground Plant Location Service (GSUPLS), a nonprofit corporation of this State, to operate the One-Call Damage Prevention System, on an interim basis, for five years after the effective date of this act. During this interim period, GSUPLS will operate the system in conformance with the provisions of this act and the board shall have policy oversight over operation of the system.

### **§ 48:2-78. Appropriate waiver conditions**

The board may grant a waiver from the requirements of section 8 [C.48:2-80] of this act for such reasons as it deems appropriate. The board shall have sole jurisdiction and authority for reviewing and granting or denying any waiver requested pursuant to this section. However, a waiver shall be deemed appropriate in those instances when an operator demonstrates that:

a. Damage to the underground facilities owned, operated, or controlled by the operator would pose no threat to the public safety; or

b. There is no possibility that an underground facility owned, operated or controlled by the operator will be damaged by excavating activities.

An operator who has requested a waiver pursuant to this section shall participate in the One-Call Damage Prevention System while the request is being considered by the board.

### **§ 48:2-79. System operator, responsibilities**

The system operator shall:

a. Operate the One-Call Damage Prevention System, which shall include but not be limited to the services described in section 4 [C.48:2-76] of this act;

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b. Establish a schedule of fees under which each operator shall pay an equitable share of the costs of maintaining the One-Call Damage Prevention System. This schedule of fees shall be submitted to the board for review and approval and shall be subject to the continuing jurisdiction of the board;

c. Ensure that the One-Call Damage Prevention System operates in all areas of the State. The telephone number of the One-Call Damage Prevention System for providing any notice required by this act shall be a toll-free number;

d. Notify the public and known excavators of the requirement pursuant to this act for the mandatory use of the One-Call Damage Prevention System to locate underground facilities; and

e. Comply with all other provisions of this act.

**§ 48:2-80. Underground facility operator, responsibilities; underground facility markings**

a. Except as provided in sections 6 and 9 [C.48:2-78 and C.48:2-81] of this act, the operator of an underground facility shall:

(1) Participate in and comply with the requirements of the One-Call Damage Prevention System established pursuant to section 4 [C.48:2-76] of this act; and

(2) Mark, stake, locate or otherwise provide the position and number of its underground facilities which may be affected by a planned excavation or demolition within three business days after receipt of the information concerning a notice of intent to excavate transmitted pursuant to subsection a. of section 10 [C.48:2-82] of this act. An underground facility shall be marked in accordance with standards approved by the board, which shall be based upon approved industry standards, and shall be marked at the site within 18 inches horizontally from the outside wall of the facility, in a manner that will enable the excavator to employ prudent techniques, which may include hand-dug test holes, to determine the precise position of the operator's underground facility. An underground facility shall be marked from information available in the operator's records or by use of standard locating techniques other than excavation. In temporarily marking the approximate position of an underground facility, an operator shall utilize the following color coding:

Utility and Type Product	Identifying color
Electric Power Distribution and Transmission	Safety Red
Municipal Electric Systems	Safety Red
Gas Distribution and Transmission	High Visibility Safety Yellow
Oil Distribution and Transmission	High Visibility Safety Yellow
Dangerous Materials, Product Lines, Steam Lines	High Visibility Safety Yellow

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Telephone and Telecommunications	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 Lines	Safety Green

b. If an operator does not own, operate or control any underground facilities at the site concerning which he received information of a notice of intent to excavate transmitted pursuant to subsection c. of section 4 of this act, the operator shall make a reasonable effort to so advise the person giving the notice of intent to excavate, providing the notice is given within the time frame set forth in subsection a. of section 10 of this act.

c. An operator shall maintain a record of all damage to its underground facilities, including all damage reported by an excavator pursuant to subsection e. of section 10 of this act. An operator shall provide an updated copy of this record to the board on a quarterly basis.

d. Any underground facilities operator that fails to mark, locate, or otherwise provide the position and number of its underground facilities which may be affected by a planned excavation or demolition, in accordance with the provisions of paragraph (2) of subsection a. of this section, shall be liable for any costs, labor, parts, equipment and personnel downtime, incurred by an excavator damaging a facility owned, operated or controlled by the underground facility operator. An excavator that damages an underground facility in violation of the provisions of the "Underground Facility Protection Act," P.L. 1994, c. 118 (C. 48:2-73 et seq.) shall be liable for any costs, labor, parts, equipment and personnel downtime, incurred by the underground facilities operator that owns or controls the damaged underground facility. Any dispute arising from the provisions of this subsection, where the claim is less than \$ 25,000, shall be subject to an alternative dispute resolution process as established within the Office of Dispute Settlement in the Office of the Public Defender. Nothing in this act shall be construed to discourage parties from pursuing alternative dispute resolution processes for an amount greater than \$ 25,000. The parties may by mutual agreement designate another alternative dispute resolution association for all matters.

#### **§ 48:2-81. Marking of facilities; nonapplicability; excavation, permitting process on State property**

a. The requirement, pursuant to paragraph (2) of subsection a. of section 8 [C.48:2-80] of this act, for an operator to mark, stake, locate or otherwise provide the position of its underground facilities shall not apply to an underground non-metallic water pipe or non-metallic water distribution facility installed prior to the effective date of this act. An operator that qualifies for this exemption shall cooperate with the excavator in reasonable efforts to determine the location of such facilities.

b. The requirement pursuant to paragraph (2) of subsection a. of section 8 of this act for an operator to mark, stake, locate or otherwise provide the position of its underground facilities shall be deemed met by a State department or agency when an excavation is

conducted on property or a right-of-way owned or controlled by the State department or agency and the excavation is subject to an excavation permitting process by the State department or agency if:

(1) The underground facilities of the State department or agency at the proposed excavation site comprise only traffic signals and lights or street and highway lights and their associated electrical feeds, control lines and traffic sensing loops;

(2) The State department or agency excavation permit is conditional upon the excavator notifying the One-Call Damage Prevention System; and

(3) The State department or agency provides the excavator with plans of the position and number of its underground facilities during the permitting process and agrees to cooperate on a continuing basis with the excavator in reasonable efforts to determine the location of such facilities, including notifying an excavator of any changes which may occur in the position or number of underground facilities after the initial issuance of plans to the excavator. However, the State department or agency may elect to mark, stake, or locate its underground facilities pursuant to the requirements of paragraph (2) of subsection a. of section 8 of this act.

If a State department or agency elects not to mark or stake its facilities under this subsection, an excavator who has conformed with the requirements of this act and all other applicable permit requirements, and uses reasonable care while excavating shall not be liable for damage to the State department or agency's underground facilities.

#### **§ 48:2-82. Notification of the One-Call Damage Prevention System; excavator's duties**

a. An excavator shall notify the One-Call Damage Prevention System established pursuant to section 4 [C.48:2-76] of this act of his intent to engage in excavation or demolition not less than three business days and not more than 10 business days prior to the beginning of the excavation or demolition.

b. Upon notifying the One-Call Damage Prevention System, an excavator shall provide the following information:

(1) The name and telephone number of the person notifying the system;

(2) The name, address, and office and field telephone numbers and facsimile numbers of the excavator;

(3) The name, address and telephone number of the person for whom the excavation work is to be performed; and

(4) The specific site location, starting date, starting time and description of the intended excavation or demolition, including the approximate depth of the excavation or demolition.

c. Where appropriate to provide clarification, an excavator shall mark and identify the perimeter of the proposed site of the excavation by the color white prior to notifying the One-Call Damage Prevention System of his intent to engage in excavation or demolition.

d. An excavator shall:

(1) Not operate any mechanized equipment within two feet horizontally of the outside wall of any underground facility marked in accordance with the provisions of this act, or marked in accordance with any rule, regulation, or order adopted pursuant to this act, unless the underground facility has first been located by hand digging. Mechanized equipment shall be used with proper care and under adequate supervision to avoid damage to the underground facility;

(2) Plan the excavation or demolition to avoid damage to and to minimize interference with underground facilities;

(3) Use reasonable care during excavation or demolition to avoid damage to or interference with underground facilities; and

(4) After commencement of excavation or demolition, protect and preserve the marking, staking, or other designation of an underground facility until the marking, staking, or other designation is no longer necessary for safe excavation or demolition.

e. An excavator shall immediately report to the operator of an underground facility any damage to the underground facility caused by or discovered by the excavator in the course of an excavation or demolition.

f. Notice for an excavation that is commenced within 10 business days, as pursuant to the provisions of subsection a. of this section, shall remain valid for 45 business days from the notification, providing that the excavator maintains any mark out that is made by an operator in accordance with the provisions of paragraph (4) of subsection d. of this section. Any excavation occurring after 45 business days from the time of such notification shall require a new notification, in accordance with the provisions of this section.

#### **§ 48:2-83. Proof of notification required for permission to excavate**

The provisions of any other law, rule, regulation or ordinance to the contrary notwithstanding, any permit or permission for a road opening, building, blasting, demolition or excavation granted by a public entity to an excavator that will result in excavation or demolition activity shall not be effective until the excavator provides proof to the public entity that the excavator has notified the One-Call Damage Prevention System pursuant to section 10 [C.48:2-82] of this act. This proof may be provided by supplying the public entity with the confirmation number assigned to the notice of intent pursuant to subsection b. of section 4 [C.48:2-76] of this act.

#### **§ 48:2-84. Nonapplicability to emergencies**

The provisions of this act shall not apply when an excavation or demolition is undertaken in response to an emergency, provided that the One-Call Damage Prevention System is notified at the earliest reasonable opportunity and that all reasonable precautions are taken to protect underground facilities.



### **§ 48:2-85. Map of pipeline; filing**

a. An operator of an interstate natural gas pipeline or an interstate hazardous liquid underground pipeline shall file a map depicting the route of the pipeline in this State with the clerk of each municipality in the State through which the interstate pipeline passes, with the board, and with the Department of Environmental Protection.

b. Nothing in this act shall be construed to modify or interfere with the enforcement jurisdiction of the United States Department of Transportation with regard to the operators of interstate pipelines.

### **§ 48:2-86. Violation of act; injunction; civil penalties**

a. Whenever it appears to the board that a person has violated any provision of P.L.1994, c.118 (C.48:2-73 et al.), or any rule, regulation or order adopted pursuant thereto, it may issue an order specifying the provision or provisions of P.L.1994, c.118, or the rule, regulation or order of which the person is in violation, citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his right to a hearing on the matters contained in the order. Such order shall be effective upon receipt and any person to whom such order is directed shall comply with the order immediately.

b. The board may institute an action or proceeding in the Superior Court for injunctive and other relief for any violation of P.L.1994, c.118 (C.48:2-73 et al.), or of any rule or regulation adopted pursuant to P.L.1994, c.118 and the court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief, notwithstanding the provisions of R.S.48:2-24.

Such relief may include, singly or in combination:

(1) A temporary or permanent injunction; and

(2) Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection. Assessments under this subsection shall be paid to the State Treasurer.

The board or an affected operator may institute an action in the Superior Court to enjoin a person whose repeated failure to comply with the provisions of P.L.1994, c.118 constitutes a threat to public safety from engaging in any further excavation or demolition work within the State, except under such terms and conditions as the Superior Court may prescribe to ensure the safety of the public.

c. The provisions of section 16 of P.L.1994, c.118 (C.48:2-88) to the contrary notwithstanding, a person who is determined by the board, after notice and opportunity to be heard, to have violated any provision of P.L.1994, c.118 (C.48:2-73 et al.) or any rule, regulation, or order adopted pursuant thereto with respect to a natural gas underground pipeline or distribution facility, or a hazardous liquid underground pipeline or distribution facility, shall be liable to a civil penalty not to exceed \$ 100,000 for each violation for each day the

violation continues, except that the maximum civil penalty may not exceed \$ 1,000,000 for any related series of violations.

Any civil penalty imposed pursuant to this subsection may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the board shall consider the nature, circumstances, and gravity of the violation; the degree of the violator's culpability; any history of prior violations; the prospective effect of the penalty on the ability of the violator to conduct business; any good faith effort on the part of the violator in attempting to achieve compliance; the violator's ability to pay the penalty; and other factors the board determines to be appropriate.

The amount of the penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the State to the person charged, or may be recovered, if necessary, in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with P.L.1994, c.118.

d. Pursuit of any remedy specified in this section shall not preclude the pursuit of any other remedy, including any civil remedy for damage to an operator's underground facilities or for damage to a person's property, provided by any other law. Administrative and judicial remedies provided in this section may be pursued simultaneously.

#### **§ 48:2-87. Illegal excavation; disorderly persons offense, third degree crime**

Any person who knowingly engages in an excavation without:

- a. First using the One-Call Damage Prevention System to determine the location of underground facilities in the area being excavated; or
- b. Heeding appropriate location information or markings established by any operator; or
- c. Otherwise complying with the provisions of this act; is guilty of a disorderly persons offense. If, because of the violation, damage occurs to an underground facility resulting in death, serious bodily harm, or actual damage to property or loss of service revenue exceeding \$ 50,000, or damage occurs to an underground hazardous liquid pipeline facility resulting in the release of more than 50 barrels of product, the person shall, upon conviction, be guilty of a crime of the third degree.

Nothing in this section shall limit the jurisdiction of the board with respect to natural gas pipeline safety or limit the jurisdiction of the board or a court of competent jurisdiction with respect to the civil administrative penalty and enforcement provisions of this act.

#### **§ 48:2-88. Penalty for operator violations**

- a. An operator or excavator, or the person who operates the One-Call Damage Prevention System, who violates any provision of this act or any rule or regulation or order adopted pursuant thereto shall be liable to a civil penalty of not less than \$ 1,000 and not more than \$ 2,500 per day for each day the violation continues, except that the maximum civil penalty may not exceed \$ 25,000 for any related series of violations.

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b. Any civil action pursuant to subsection a. of this section may be brought in a court of this State by the board or by an affected operator. Nothing in this act shall affect any civil remedy for damage to an operator's underground facility or for actual damage to any person's property.

**§ 48:2-89. Notice failure, prima facie evidence of negligence**

Evidence that an excavation or demolition that results in any damage to an underground facility was performed without providing the notice required pursuant to section 10 [C.48:2-82] of this act shall be prima facie evidence in any civil or administrative proceeding that the damage was caused by the negligence of the person engaged in the excavation or demolition.

**§ 48:2-90. Civil penalties to the State**

All civil penalties recovered pursuant to this act shall be paid into the General Fund.

**§ 48:2-91. Board's jurisdiction not affected**

Nothing in this act shall limit the jurisdiction of the board:

- a. Over public utilities pursuant to R.S. 48:2-1 et seq., notwithstanding the fact that a public utility may be an operator or excavator as defined in section 3 [C.48:2-75] of this act; or
- b. Concerning natural gas pipeline safety pursuant to R.S. 48:9-33.