

## CHAPTER 22

AN ACT concerning underground facilities and amending P.L.1994, c.118.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 3 of P.L.1994, c.118 (C.48:2-75) is amended to read as follows:

C.48:2-75 Definitions.

3. 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;

"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 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. s. 2001 et seq.), but does not include storm drains or gravity sewers.

2. Section 8 of P.L.1994, c.118 (C.48:2-80) is amended to read as follows:

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

8. a. Except as provided in sections 6 and 9 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 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 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
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.

3. Section 10 of P.L.1994, c.118 (C.48:2-82) is amended to read as follows:

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

10. a. An excavator shall notify the One-Call Damage Prevention System established pursuant to section 4 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.

4. This act shall take effect immediately.

Approved January 24, 2005.