

Chapter 8

UNDERGROUND UTILITY DAMAGE PREVENTION AND SAFETY

Subchapter I

Underground Utility Damage Prevention and Safety Act

§ 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 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" shall mean no longer in service or use and physically disconnected from a facility.

(2) "Approved notification center" shall mean the communication system established within this state pursuant to to § 807 of this title to:

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" shall mean to fill the void created by excavating

(4) "Business Day" shall mean 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" shall mean the process of arresting corrosion on a buried or submerged structure by electrically reversing the natural chemical reaction. This includes, but is not limited to, 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" shall mean the Public Service Commission of Delaware.

(7) "Complex project" shall mean 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" shall mean adherence to the statute and its regulations

(9) "Damage" shall mean 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, but not limited to, the protective coating, tracer wire, lateral support, cathodic protection, or the housing for the facility, device or facility.

(10) "Design Ticket" shall mean 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.

(11) "Demolish or demolition" shall mean 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 facilities.

(12) “Designer” shall mean 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” shall mean a lack of compatibility between the facility marks and the physical environment.

(14) “DNREC Regulated Site” shall mean 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.

(15) “Emergency” shall mean 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” shall mean a communication to the approved notification center to alert the involved underground facility owner/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” shall mean man-made controls designed to isolate or contain in the ground waste or materials hazardous to human health and the environment. The term shall include 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

(18) “Excavate” or “excavation” shall mean any operation using non-mechanized or mechanized equipment, demolition, or explosives in the movement of earth, rock, or other material below existing grade. This includes, but is not limited to, augering, blasting, boring, digging, ditching, dredging, drilling, driving-in, grading, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling. This 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.

(19) “Excavation Ticket” shall mean 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, an update, remark or new excavation ticket will be required.

(20) “Excavator” shall mean any person proposing to or engaging in excavation or demolition work for himself or for another person.

(21) “Facility” shall mean an underground or submerged conductor, pipe, or structure used to provide electric or communications service (including, but not limited to, 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, but not limited to, irrigation systems), and appurtenances thereto.

(22) “Facility owner/operator” shall mean 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 their own property through their own facility if they do 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” shall mean 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” shall mean the surface of the earth (i.e. ground level) upon which a structure is built or prepared.

(25) “Locate” shall mean 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” shall mean a communication between an excavator or designer and the approved notification center in which a request for locating underground facilities is processed.

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

(28) “Meeting Ticket” shall mean a request for any combination of locators, excavators, designers, or facility owner/operators, to assemble on the site and discuss the project or proposed work. This shall occur on all complex projects. Excavation shall not be performed on a meeting ticket. Excavation tickets shall not be submitted for the project until after the Meeting Ticket.

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

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

(31) “Person” shall mean any individual or legal entity, public or private.

(32) “Positive Response” shall mean communication with the excavator prior to excavation to ensure that all contacted (typically via the approved notification center) facility owner/operators have located their underground facilities and have appropriately marked any potential conflicts within the areas of planned excavation.

(33) “Private Service” shall mean 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” shall mean any person who or which engages an excavator for any project which requires excavation work.

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

(36) “Site” shall mean 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. Where possible, the points should also reference, without limitation, 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” shall mean 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” shall mean 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 state/local jurisdiction, but the preferred techniques include hand digging with extreme caution and/or vacuum excavation.

(39) “Ticket” shall mean a numbered document issued by the Approved Notification Center to notify facility owner/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” shall mean the horizontal space within 24 inches of the outside wall or edge of a facility where special care is to be taken. No mechanized equipment will be allowed within the tolerance zone. Vacuum excavation will be permitted.

(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.

a) “Trenchless technology” includes:

- i. tunnelling;
- ii. microtunnelling;
- iii. horizontal directional drilling or directional boring;
- iv. pipe ramming;
- v. pipe jacking;
- vi. moling;
- vii. horizontal auger boring; and
- viii. any other method for the installation of pipelines and cables below ground with minimal excavation.

(42) “Underground pipeline facility operator” shall mean 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.

(43) “Vacuum Excavation” shall mean a means of soil extraction through vacuum; water or air jet devices are commonly used for breaking the ground

(44) “White Lining” shall mean the process in 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

(62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1; 72 Del. Laws, c. 323, §§ 1, 2.)

§ 803 Duties of facility owner / operator.

It shall be the duty of each facility owner / operator:

(1) To participate in the approved notification center.

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

a. The name of the facility owner / operator;

b. The location of the facility owner / operator’s lines; and

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

(3) To give like written notice within 5 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 / 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 / operator facilities in the area, not more than 3 business days after receipt of such requests.

(5) To inform excavators or facility owner / 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 an facility owner / 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 / 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/operator shall provide a positive response via the 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.

(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 facility owner / operator’s facilities in the area within 15 business days of receipt of a request. Information that can be provided includes, but is not limited to, maps, digital files, GIS data, and plans. Physical markings shall be at the discretion of the facility owner.

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

(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/operator; however, such identification shall not impose any liability upon the facility owner/operator for the accuracy of the other facility’s identification. The facility owner/operator shall locate all underground facilities within the State highway rights of way unless maintained by another facility owner/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/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/operator are damaged by an excavator by reason of such excavator’s failure to notify the facility owner/operator because the facility owner/operator was not a member of the approved notification center, such facility owner/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 shall include 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, but not limited to, gas, water, and wastewater pipes.

(13) Except as provided in paragraph (10) 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.

(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 owner / operators who are also underground pipeline facility operators.

It shall be the duty of each underground pipeline 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 owner / operators whose facilities are listed, as required by § 803 of this title, in the area of the proposed excavation or demolition;
- (2) To obtain the information prescribed in § 803(6) or (7) of this title from each facility owner / operator identified as required by § 803(2) of this title;

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

(4) To meet with each facility owner/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/operator's facilities in the construction area consistent with existing easements or otherwise consistent with this statute where no easement exists.

(62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1.)

§ 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 contact information of the approved notification center;
- (2) Notify the approved notification center not less than 3 business days, but no more than 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;
 - b. The name, address, email address and telephone number of the excavator;
 - c. The specific location, starting date and description of the intended excavation or demolition activity; if exact location cannot be determined, white line marking is highly recommended.

d. All tickets shall conform to the following:

- Location of excavation or demolition limited to a maximum length of 1,320 continuous feet
- If proposed excavation is of such size or length that the facility owner cannot mark within two days, then an excavator shall notify an owner where excavation will first be made and the remainder shall be marked by an owner within a reasonable time thereafter.
- On extensive or contiguous construction, working agreements regarding the marking time periods can be established between an excavator and owner.
- Individual tickets shall be required for any lot/parcel that is non-contiguous.

- (3) Ascertain the location and type of 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 subsection by contacting the operator / excavator 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 subsection. No excavation may begin until a positive response code of clear/no conflict or marked is received through the positive response system from each facility owner/operator through the owner/operator/excavator information exchange system.
- (5) Maintain in a prudent and careful manner all markings provided by facility owner / operators in accordance with the provisions of § 803 of this title. In the event of the obliteration, destruction or removal of the markings, the excavator shall notify the approved notification center and follow Section 806.a.2.
- (6) If visible and obvious evidence of the presence of an unmarked facility does exist, the excavator shall attempt to designate location of such facility prior to excavating through the means of a second request notification through the Approved notification center Positive Response Information System. The facility owner/operator, or its subsequent agents designated for facility locations, will have a maximum of two hours to respond to this request and designate location of unmarked facility
- (7) Excavate prudently and carefully and to take all reasonable steps necessary to properly protect, support and backfill underground 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 facility line for other than parallel type excavations and at reasonable distances along the line of excavation for parallel type excavations;
- (8) Report immediately to the facility owner / operator any break in, or leak on, its facilities, any dent, gouge, groove or other damage to such facilities or to the coating or cathodic protection made or discovered in the course of the excavation or demolition 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. To immediately notify 911 and the facility owner / 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 its knowledge, training, resources, experience and understanding of the situation to protect itself, its employees, and those in immediate danger, and the environment, until the facility owner / 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/no conflict or marked is received through the positive response system from each facility owner/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/operator, designer, or their 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/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/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 owner/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/operator in determining the involvement of the facility owner/operator's facilities by disclosing additional available information requested by the facility owner / 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 / 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 five feet of the excavation and shall take extra precautions within the tolerance zone, as outlined in § 802. Excavators shall use test holes to ascertain the precise location of all facilities that contain hazardous or flammable substances within five 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 / operator of this fact immediately.

(b) The requirements of paragraphs (a)(1) through (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) 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 owner / operators' facilities within the State;

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

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

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

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

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

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

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

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

a. The existence of the approved notification center;

b. The purpose and general requirements of this chapter;

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

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

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

(11) To 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 shall be the duties of those parties and shall not be imputed to the approved notification center. The approved notification center shall not be responsible for the accuracy of the information provided to it by a third-party concerning excavation notification, nor shall it be responsible for what is done with such information when its provided it to facility owner / operators. The approved notification center shall not be liable to any person for damages arising out of its non-negligent actions in furtherance of the duties imposed under this act, and then shall be liable only if such 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.

(1) 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 / 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.

(2) No penalties provided for in § 810 of this title shall 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 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 or property, not necessarily limited to facilities, or has otherwise violated, is about to violate or is violating any provision of this chapter, the Attorney General or any facility owner / operator or owner of said facility may institute an action for the purpose of having such excavation or demolition stopped or prevented, either by mandatory or prohibitive injunction, 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 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 may, for the first offense, be assessed a civil penalty not less than \$100 nor more than \$1,000. For each subsequent like offense, such person may be assessed a civil penalty not less than \$200 nor more than \$5,000 for each violation.

(2) Facility owner / 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 shall 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) All civil penalties collected shall be used by the approved notification center for one or more of the following purpose(s):

a. Public awareness programs.

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

c. Improvements to the approved notification center operations.

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

(6) Any cost associated with a civil penalty to a facility owner / operator may not be collected by that facility owner / 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.

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 owner / 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 / 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 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.)

§ 812 Conviction not admissible.

A conviction under this chapter, even when obtained pursuant to a guilty plea, shall not be admissible in any civil proceedings involving personal injury, wrongful death or property damage. (62 Del. Laws, c. 148, § 2; 69 Del. Laws, c. 455, § 1.)

§ 813 Effective date.

The effective date of this chapter shall be January 1, 1995. (69 Del. Laws, c. 455, § 1.)

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