

# **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**

§ 48:2-73. Short title .....	1
§ 48:2-74. Findings, declarations, determinations .....	1
§ 48:2-75. Definitions .....	2
§ 48:2-76. One-Call Damage Prevention System, established; rules, regulations .....	3
§ 48:2-77. Operation of One-Call Damage Prevention System .....	4
§ 48:2-78. Appropriate waiver conditions .....	4
§ 48:2-79. System operator, responsibilities.....	4
§ 48:2-80. Underground facility operator, responsibilities; underground facility markings ...	5
§ 48:2-81. Marking of facilities; nonapplicability; excavation, permitting process on State property .....	6
§ 48:2-82. Notification of the One-Call Damage Prevention System; excavator's duties.....	7
§ 48:2-83. Proof of notification required for permission to excavate .....	8
§ 48:2-84. Nonapplicability to emergencies.....	8
§ 48:2-85. Map of pipeline; filing.....	9
§ 48:2-86. Violation of act; injunction; civil penalties .....	9
§ 48:2-87. Illegal excavation; disorderly persons offense, third degree crime .....	10
§ 48:2-88. Penalty for operator violations .....	10
§ 48:2-89. Notice failure, prima facie evidence of negligence .....	11
§ 48:2-90. Civil penalties to the State.....	11
§ 48:2-91. Board's jurisdiction not affected.....	11

#### **§ 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;

*Note: This is a courtesy copy of the Underground Facility Protection Act. The official version is found in the New Jersey Statutes Annotated at N.J.S.A. 48:2-73 et seq. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

"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.

*Note: This is a courtesy copy of the rules. The official version is found in the New Jersey Administrative Code at N.J.A.C. 14:2. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.*

# **NEW JERSEY BOARD OF PUBLIC UTILITIES**

## **Readoption With Amendments of N.J.A.C. 14:2**

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

Adopted August 23, 2007

1CHAPTER 2. UNDERGROUND FACILITIES: ONE-CALL DAMAGE PREVENTION SYSTEM.....	13
SUBCHAPTER 1. SCOPE .....	13
14:2-1.1 Scope and applicability.....	13
14:2-1.2 Definitions .....	13
SUBCHAPTER 2. ONE-CALL System operator.....	17
14:2-2.1 Duties of System operator.....	17
14:2-2.2 Designation and term of System operator .....	18
SUBCHAPTER 3. EXCAVATORS AND RESPONSIBLE CONTRACTORS .....	18
14:2-3.1 Notice of intent to excavate - timing .....	18
14:2-3.2 Notice of intent to excavate – contents, perimeter marking.....	19
14:2-3.3 Excavators - onsite requirements.....	21
14:2-3.4 Responsible contractors.....	21
14:2-3.5 Excavation or demolition in response to an emergency .....	23
14:2-3.6 Excavators - incident and damage reporting .....	23
SUBCHAPTER 4. UNDERGROUND FACILITY OPERATORS .....	24
14:2-4.1 Applicability .....	24
14:2-4.2 Underground facility operators – basic requirements .....	25
14:2-4.3 Underground facility operators – markout records.....	26
14:2-4.4 Underground facility operators – accidents and emergencies .....	27
SUBCHAPTER 5. MARKOUTS.....	28
14:2-5.1 General markout provisions .....	28
14:2-5.2 Specifications for marks used in markouts .....	29
TABLE A.....	31
14:2-5.3 Types of markouts.....	32
14:2-5.4 Centerline markouts .....	33
14:2-5.5 Outside dimension markouts.....	33
14:2-5.6 Offset markouts.....	34
SUBCHAPTER 6. VIOLATIONS, PENALTIES, ENFORCEMENT .....	35
14:2-6.1 Violations in general.....	35
14:2-6.2 Injunction, civil penalties.....	35
14:2-6.3 Notice failure, prima facie evidence of negligence .....	37
14:2-6.4 Civil penalties to the State.....	37

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## CHAPTER 2. UNDERGROUND FACILITIES: ONE-CALL DAMAGE PREVENTION SYSTEM

### SUBCHAPTER 1. SCOPE

#### 14:2-1.1 Scope and applicability

(a) This chapter implements the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq.

(b) This chapter governs the following, as these terms are defined at N.J.A.C. 14:2-1.2:

1. The Board-designated One-Call System Operator;
2. Underground facility operators;
3. Excavators; and
4. Responsible contractors.

(c) This chapter establishes the one-call damage prevention system (also called the One-Call System). The One-Call System receives information from excavators that plan to perform excavation or demolition, and relays that information to those persons that own, operate, or control the operation of underground facilities, and have registered with the One-Call System Operator. This chapter is intended to ensure that underground facilities are marked to enable excavators to avoid damaging underground facilities.

(d) This chapter applies to a homeowner as follows:

1. Because a homeowner that owns only residential underground facilities, including but not limited to an underground sprinkler system or an underground structure for lighting, is excluded from the definition of "underground facility operator," such a homeowner is not subject to the requirements for underground facility operators at N.J.A.C. 14:2-4; and
2. Any homeowner that performs excavation or demolition is acting as an excavator and therefore shall comply with all requirements of this chapter that apply to excavators, including the requirement at N.J.A.C. 14:2-3.1 for notice to the One-Call center prior to excavation or demolition.

(e) This chapter does not affect or apply to the requirements for identification of utility equipment under N.J.A.C. 14:3-2.5.

#### 14:2-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1.

"Act" means the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq.

"Business day" means any day other than Saturday, Sunday, or a State recognized holi-

day.

"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:

1. 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 by 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
2. 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 "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. This term includes utility pole removal, but does not include:

1. Routine maintenance of residential property or of a residential right-of-way, performed with non-mechanized equipment;
2. Routine use of a hand tool on a residential property or a residential right-of-way, to remove earth for the repair of a sprinkler system or to locate a property boundary marker, which does not remove earth to a depth of more than six inches;
3. Excavation or demolition that remains entirely within the flexible or rigid pavement box within a right-of-way, such that it does not disturb any material except for the pavement;
4. Tilling of soil for agricultural purposes to a depth of eighteen inches or less, on land that has received or is eligible to receive a farmland assessment under the New Jersey Farmland Assessment Act, N.J.S.A 54:4-23.1 et seq.;
5. Routine landscaping activities with mechanized equipment that are intended to cut only vegetation, including lawn edging and de-thatching;
6. Routine maintenance of residential property for pest management purposes performed with non-mechanized equipment.

"Excavator" means any person performing excavation or demolition, including a homeowner or person performing excavation or demolition on a residential property on behalf of a homeowner.

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

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“Mark” means any line, arrow, curve, whiskers, flag, stake, or other symbol, placed or made as part of a markout.

“Markout” means letters, symbols and marks, as defined in this section, placed on the ground or other surface in order to show the location and characteristics of an underground facility.

"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.

“Nominal” means, in relation to the size of a pipe or other underground facility, a stake, or other object, the commonly used name of the size of the object, rather than the actual size of the object. For example, since dimensional lumber is named based on its size before drying and planing, the nominal or common-named sizes of dimensional lumber are usually expressed in terms of the nearest inch, regardless of the actual size of the lumber. Thus, a board that is 2 x 4 inches in nominal size is closer to 1 ½ inches by 3 ½ inches in actual size.

"One-Call Damage Prevention System" means the communication system established in New Jersey pursuant to N.J.S.A. 48:2-76.

“One-Call System operator” or “System operator” means the person, as defined at N.J.A.C. 14:3-1.1, that the Board has designated to operate the New Jersey One-Call Damage Prevention System. The System operator’s duties are detailed in a tariff, approved by the Board.

“One-Call incident” means any of the following, if it involves an underground facility and results from excavation or demolition:

1. Death of a person;
2. Serious disabling or incapacitating injuries to one or more persons, including employees or contractors of an excavator or underground facility operator;
3. Evacuation of a building that normally is occupied by more than twenty-five people;
4. Evacuation of a school, hospital, public transit station, or similar public building;
5. Damage to the property of others estimated at more than \$5,000;
6. Damage to the property of the underground facility operator, which materially affects electric, gas, water or wastewater service to the public;
7. Major disruption of traffic, business, media operations, transportation, or any other vital communication or public service;
8. Significant environmental impact; or
9. An event that attracts the presence of media personnel at the event, or that attracts telephone or other contact from media personnel at the time of the event; and

10. Any other occurrence similar to those at 1 through 9 above, which has a significant impact on community or public safety functions.

"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.

"Probe bar" means a rigid bar that is pushed through the earth in order to determine the exact location of underground facilities.

"Rented equipment" means mechanized equipment which is rented complete with its operator for use in an excavation or demolition.

"Rented equipment operator" means a person that performs excavation or demolition using rented equipment.

"Responsible contractor" means a person that takes responsibility for ensuring that excavation or demolition that is performed by a rented equipment operator complies with this chapter.

"Routine" means an activity which is conducted on a cyclical basis, such as annually or seasonally, which is unlikely to result in damage to an underground facility.

"Routine maintenance of residential property or of a right-of-way" means an activity which meets all of the following criteria:

1. Is repeated on a cyclical basis, such as annually or seasonally;
2. Is conducted on a residential property or a right-of-way;
3. Is conducted with a hand tool and without the use of mechanized equipment, as defined in this section; and
4. Is unlikely to result in damage to any underground facility.

"Site" means the specific place where the excavation or demolition is performed or is to be performed and shall be identified by street address referenced to the nearest intersecting street and sub-division name, if applicable, as well as by lot and block number, if available, and by kilometer or mile marker for railways. The boundaries of a site are determined by the excavator that will be doing the excavation or demolition.

"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.

"Underground facility" means any public or private personal property:

1. Which is buried, placed below ground, or submerged on a right-of-way, easement, public street, other public place or private property; and
2. Which is being used, or will be used:

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- i. For the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, or traffic control; or
- ii. For the transportation of a hazardous liquid regulated pursuant to 49 U.S.C. §§60101 et seq.

This term does not include storm drains or gravity sewers. For the purpose of this definition, "personal property" means a single conduit, or multiple conduits of the same facility type within a rigid envelope such as a concrete envelope. This envelope shall be considered one facility for the purposes of these rules, except as otherwise specifically provided.

"Underground facility operator" or "operator" means a person that owns or operates, or controls the operation of, an underground facility, except that this term does 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.

"Whiskers" means a small sheaf of plastic fibers, bent double and fastened together at the bent end, used to create a marker that may be used in place of paint under N.J.A.C. 14:2-5.2(c).

## **SUBCHAPTER 2. ONE-CALL System operator**

### **14:2-2.1 Duties of System operator**

(a) The System operator shall operate a one-call center that is open twenty-four hours per day, seven days per week, and serves the entire State. The telephone number for the One-Call center shall be 1-800-272-1000 or 811.

(b) The System operator shall staff the one-call center with representatives that will do all of the following:

1. Receive and record the notice of intent to excavate provided under N.J.A.C. 14:2-3.1;
2. Assign a confirmation number to each notice of intent to engage in an excavation;
3. Inform the excavator or responsible contractor of the confirmation number;
4. For each notice of intent, maintain a register showing the name, address, and telephone number of the excavator or responsible contractor, the site to which the notice pertains, and the assigned confirmation number;
5. Promptly transmit to the appropriate underground facility operator(s) the information received from an excavator or responsible contractor regarding intended excavation or demolition;
6. Maintain a record of each notice of intent, for seven years from the date of the System operator's receipt of the notice; and
7. Provide to the excavator or responsible contractor the names of the underground facility operators who will be notified by the One-Call center of the intended excavation.

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(c) The System operator shall provide a form to excavators for the purpose of reporting a condition or configuration which has the potential to pose a danger to health and safety, in accordance with N.J.A.C. 14:2-3.4(d). Once this form is completed, the System operator shall send the completed form to the appropriate underground facility operator, in conformance with the System operator's tariff.

#### **14:2-2.2 Designation and term of System operator**

(a) The Board shall designate a System operator who shall operate the One-Call Damage Prevention System in accordance with a tariff approved by the Board.

(b) The term of the System operator shall be five years, but the Board may rescind this designation if it determines, after hearing, that the designee is not operating the system in conformance with N.J.S.A. 48:2-73 et seq., this chapter and its Board-approved tariff.

(c) In the fifth year of a System operator's term, the Board shall advertise the System operator position in the New Jersey Register and in newspapers of general circulation and comply with all applicable rules of the New Jersey Department of the Treasury.

(d) The Board shall accept applications and shall designate a person as the System operator for a new five year term. In choosing a System operator, the Board shall select the applicant that will best operate the system to achieve the purposes of the Underground Facility Protection Act, in accordance with N.J.S.A. 52:34-12 and N.J.A.C. 17:12.

(e) The Board shall announce its choice of System operator for the next term at least three months prior to the expiration of the existing term.

### **SUBCHAPTER 3. EXCAVATORS AND RESPONSIBLE CONTRACTORS**

#### **14:2-3.1 Notice of intent to excavate - timing**

(a) A person shall not perform excavation or demolition, as defined at N.J.A.C. 14:2-1.2, unless the person performing the excavation or demolition, or a responsible contractor, has provided notice of the excavation or demolition to the One-Call center by dialing 811 or 1-800-272-1000, or by electronic notice as directed by the One-Call System operator in accordance with its Board-approved tariff. Requests provided electronically or through any procedure other than that directed for use by the One-Call System operator shall not constitute notice in compliance with this section.

(b) An excavator or responsible contractor, as defined at N.J.A.C. 14:2-1.2, shall notify the One-Call center of the intent to engage in any excavation or demolition not less than three business days before beginning the excavation or demolition, and not more than ten business days prior to beginning the excavation or demolition, except if the excavation or demolition is necessary because of an emergency, as defined at N.J.A.C. 14:2-1.2. An excavator that performs emergency excavation or demolition shall comply with the notice re-

quirements at N.J.A.C. 14:2-3.6.

(c) Notice provided in accordance with (a) above, for an excavation or demolition that is commenced within ten business days after the notice, shall remain valid for forty-five business days from the notification, provided that the excavator maintains any markout that is made by an underground facilities operator. Any excavation or demolition continuing after the forty-five business days shall require a new notification that meets the requirements of (a) above.

(d) If the excavation or demolition is not commenced within ten business days after notice is provided to the One-Call center in accordance with (a) above:

1. The notice shall no longer be valid;
2. The excavator shall not perform any excavation or demolition on the site until the excavator or responsible contractor submits a new notification to the One-Call center; and
3. The new notification shall comply with (a) above in all respects; that is, the excavator shall notify the One-call center at least three business days before, but no more than ten business days before, beginning the excavation or demolition.

(e) By providing notice to the One-Call center, an excavator or responsible contractor assumes responsibility and liability for ensuring that the excavation or demolition is performed in accordance with this chapter and other applicable law.

(f) An excavation that is undertaken in order to repair or replace the vent or filler pipe of an underground heating oil tank or a heating system shall not be subject to the three-business day advance notice requirement at N.J.A.C. 14:2-3.1(a), provided it meets all of the requirements at 1 through 3 below. Instead, such an excavation may be started immediately after notice to the One-Call center:

1. The excavation is undertaken in response to a service call by a customer;
2. The excavation or demolition uses only non-mechanized equipment; and
3. The excavation begins after October 1 and ends before April 30 of the following year.

### **14:2-3.2 Notice of intent to excavate – contents, perimeter marking**

(a) An excavator or responsible contractor shall provide notice of a planned excavation or demolition to the One-Call center by telephone (dial 811 or 1-800-272-1000), or by electronic notice as directed by the One-Call System Operator in accordance with its Board-approved tariff. Requests provided electronically or through any procedure other than that directed for use by the One-Call System operator shall not constitute notice in compliance with this section.

(b) An excavator or responsible contractor shall provide all of the following in its notice to the One-Call center:

1. The name and telephone number of the person notifying the One-Call center;

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2. All of the following information regarding the excavator, any rented equipment operators that will be used, and the responsible contractor, if any:
  - i. Name and address;
  - ii. Office telephone numbers and e-mail addresses; and
  - iii. Field telephone number and, if available, field e-mail or text message addresses and/or facsimile numbers;
3. The name, address and telephone number, and e-mail address if available, of the person for whom the excavation or demolition is to be performed;
4. The starting time and date of the planned excavation or demolition;
5. A description of the intended excavation or demolition, including the approximate depth of the excavation or demolition; and
6. A description of the site, sufficient to enable the underground facility operator to accurately determine the location and boundaries of the site. The excavator shall utilize as many of the following methods as are necessary to ensure that the underground facility operator can accurately identify the site:
  - i. The street address of the site;
  - ii. The block and lot of the site; and/or
  - iii. A description of any white perimeter markings the excavator has made in accordance with (c) below.

(c) Where appropriate to clearly identify the site of a planned excavation or demolition, an excavator or responsible contractor may choose to mark the perimeter of the site in white, prior to notifying the One-Call center. White perimeter marking is encouraged in order to minimize unnecessary marking and locating by the underground facility operators, for example to indicate small sites, nonlinear excavations, and spot excavations such as a soil borings, mailboxes, sign posts, or tree plantings.

(d) The excavator or responsible contractor shall determine the size and shape of the site based on the planned excavation or demolition. In order to avoid unnecessary markouts, the site shall be the minimum size necessary to safely accommodate the planned excavation or demolition.

(e) If an excavator chooses to mark the site perimeters under (c) above, the excavator shall:

1. Use white paint or other appropriate white marking materials such as white flags or stakes;
2. Mark the site boundaries in a manner that is reasonably calculated to enable an underground facility operator to determine the site boundaries with sufficient accuracy so that the operator can comply with the markout provisions at N.J.A.C. 14:2-5;
3. Ensure that the white perimeter markings do not interfere with traffic or pedestrian control; and
4. If multiple excavation or demolition sites are marked in one area, each site shall be numbered, and the excavator shall provide the numbers to the One-Call center.

### **14:2-3.3 Excavators - onsite requirements**

(a) An excavator or responsible contractor shall:

1. Not operate any mechanized equipment within two feet horizontally of the outside wall of any underground facility marked in accordance with this chapter, unless the underground facility has been first 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 with reasonable care so as to avoid damage to, and minimize interference with, underground facilities;
3. Use reasonable care during excavation or demolition to avoid damage to or interference with underground facilities, including protecting each underground facility from freezing, traffic, and/or other loads or hazard in accordance with (b) below; 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.

(b) At all times throughout the course of an excavation or demolition, an excavator shall provide adequate physical support of all underground facilities on the site, as follows:

1. An excavator shall comply with all reasonable support specifications that the underground facility operator provides pursuant to N.J.A.C. 14:2-4.2(d);
2. If the underground facility operator does not provide support specifications under 1 above, the excavator shall provide support in accordance with generally accepted engineering practice. The support shall be at least equivalent to the support to the underground facility prior to the excavation;
3. The excavator shall maintain the physical support during excavation, backfilling and, if necessary, after backfilling is completed; and
4. The underground facility operator may, by mutual agreement with the excavator, choose to itself provide the physical support.

(c) If a representative of an underground facility operator determines that an excavator is not adequately protecting or supporting the facility, resulting in an unsafe condition or situation relating to the excavation or demolition, the representative may require the excavator to suspend the excavation or demolition until the problem is corrected. The representative may impose this requirement verbally only if the representative believes that an emergency exists, and shall provide a written confirmation of the verbal directive to suspend work as soon as feasible thereafter. In all other situations, the representative shall provide the directive to suspend the excavation or demolition in writing.

### **14:2-3.4 Responsible contractors**

(a) If rented equipment, as defined at N.J.A.C. 14:2-1.2, will be used for an excavation or demolition, either the rented equipment operator or a responsible contractor shall notify the One-Call center in accordance with N.J.A.C. 14:2-3.1 and 3.2. The person who notifies the One-Call center shall be responsible and liable for ensuring that all excavation or demolition performed with rented equipment complies with this chapter.

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(b) Each responsible contractor shall keep all logbooks and records required by this chapter for at least seven years, and shall make them available to the Board or Board staff upon request.

(c) A responsible contractor that notifies the One-Call center under N.J.A.C. 14:2-3.1 and 3.2 shall do all of the following:

1. Provide information as required by the One-Call center regarding all rented equipment that will be used in the excavation or demolition;
2. Wait the three business days required under N.J.A.C. 14:2-3.1 prior to performing any excavation or demolition on the site; and
3. Notify the One-Call center of each rented equipment operator that performs excavation or demolition on a site, specifying when the rented equipment operator begins working on the site; and
4. Notify the One-Call center when each rented equipment operator stops working on the site.

(d) At any time during the period that a One-Call notice is valid under N.J.A.C. 14:2-3.1(c), the responsible contractor may add or remove one or more rented equipment operators to the site, provided that the responsible contractor notifies the One-Call center before each rented equipment operator performs any excavation or demolition. No additional waiting period is required for the addition of a rented equipment operator under this subsection.

(e) A rented equipment operator shall contact the One-Call center directly to verify that the responsible contractor has notified the One-Call center of the rented equipment operator's participation in the excavation or demolition on the site.

(f) A responsible contractor shall not permit a rented equipment operator to perform excavation or demolition on a site unless the responsible contractor has notified the One-Call center that the responsible contractor will be working on that particular site.

(g) If a responsible contractor utilizes a rented equipment operator to perform excavation or demolition, the responsible contractor shall do all of the following:

1. Continuously visually monitor all hand digging and locating required under this chapter; and
2. Inspect the excavation or demolition performed by the rented equipment operator at least once each day during which the rented operator is on the site.

(h) The responsible contractor shall maintain all of the following records at the site, available for inspection by the Board or Board staff, throughout the duration of the excavation or demolition:

1. A log, updated daily, of the time and location of all hand-digging and locating performed by the rented equipment operator; and
2. A list, updated daily, of all rented equipment operators performing excavation or demolition on the site and the date and time the One-Call Center was notified of the rented equipment operator's work on the site.

### **14:2-3.5 Excavation or demolition in response to an emergency**

- (a) If an excavator undertakes an excavation or demolition in response to an emergency that does not permit compliance by the excavator with the notification requirements of N.J.A.C. 14:2-3.1, the excavator shall comply with this section.
- (b) An excavator that is subject to this section shall notify the One-Call center of an emergency excavation or demolition as soon as reasonably possible without causing a delay in addressing the emergency, and shall include in the notice a description of the nature of the emergency.
- (c) In a case where the excavator must perform excavation or demolition in order to address the emergency, the notice to the One-Call center shall also include a brief explanation of the circumstances that prevented the excavator from providing notice in accordance with N.J.A.C. 14:2-3.1.
- (d) An excavator that performs excavation or demolition in response to an emergency shall take all reasonable precautions to protect any underground facilities that may be located at the site of the excavation or demolition.
- (e) If an excavation is undertaken in order to repair or replace the vent or filler pipe of an underground heating oil tank or a heating system, the excavation may be started immediately after notice has been given to the One-Call center, provided the excavation meets all of the requirements at 1 through 3 below:
1. The excavation is undertaken in response to a service call by a customer;
  2. The excavation or demolition uses only non-mechanized equipment; and
  3. The excavation begins after October 1 and ends before April 30 of the following year.
- (f) An excavation performed in accordance with (e) above shall meet all other requirements of this section and this chapter.

### **14:2-3.6 Excavators - incident and damage reporting**

- (a) If an excavator causes or discovers any damage, as defined at N.J.A.C. 14:2-1.2, to a line or pipe carrying natural gas, liquid petroleum or any other hazardous liquid, the excavator shall immediately call 911, and shall immediately thereafter report the damage to the appropriate representative of the underground facility operator. If the excavator cannot reach the underground facility operator, the excavator shall report the damage to the One-Call center at 811 or 1-800-272-1000.
- (b) If an excavator causes or discovers any damage to an underground facility that carries anything other than natural gas, liquid petroleum or another hazardous liquid, the excavator shall immediately report the damage to the appropriate representative of the underground facility operator. Immediately thereafter, the excavator shall report the damage to

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the One-Call center at 1-800-272-1000 or 811.

(c) All requirements in this section apply regardless of whether the damage results in an emergency, accident, or a dangerous condition.

(d) If, during excavation or demolition, an excavator causes or discovers any of the following, the excavator may complete and submit to the One-Call center a dangerous condition reporting form:

1. An underground facility that is, in the excavator's judgment, buried at a depth that is insufficient for safety; or
2. Any other condition or configuration relating to an underground facility, which, in the excavator's judgment, has the potential to pose a danger to health and safety, and which is not covered under (a) or (b) above

(e) The form required under (d) above shall be provided by the System operator in accordance with N.J.A.C. 14:2-2.1(c).

## **SUBCHAPTER 4. UNDERGROUND FACILITY OPERATORS**

### **14:2-4.1 Applicability**

(a) This subchapter applies to underground facility operators, as defined at N.J.A.C. 14:2-1.2, except as specified in this section.

(b) An operator of an underground non-metallic water pipe or non-metallic water distribution facility that was installed prior to November 18, 1994 is exempt from the requirement at N.J.A.C. 14:2-4.2(a)2 to mark out the facility, but shall, within three business days of the notice to the One-Call center, cooperate with excavators in reasonable efforts to determine the location of the facility.

(c) An underground facility operator that is a State department or agency is exempt from the requirement at N.J.A.C. 14:2-4.2(a)2 to mark out its facilities in accordance with N.J.A.C. 14:2-4.2(a)2 if all of the following criteria are met:

1. The excavation or demolition is conducted on property or a right-of-way owned or controlled by the State department or agency;
2. The only underground facilities of the State department or agency at the site are traffic signals and lights, or street and highway lights; and their associated electrical feeds, control lines and traffic sensing loops;
3. The excavation or demolition requires a permit from the State department or agency;
4. The required permit is conditioned upon the excavator notifying the One-Call center in accordance with N.J.A.C. 14:2-4.2(a)2;
5. During the permitting process, the State department or agency provides the excavator with plans showing the position and number of its underground facilities on the site; and

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6. The State department or agency agrees to cooperate on a continuing basis with the excavator in reasonable efforts to determine the location of its underground facilities, including notifying the excavator of any changes in the position or number of underground facilities after the initial issuance of plans to the excavator.

(d) If a State department or agency chooses to comply with (c) above rather than to mark out its underground facilities in accordance with N.J.A.C. 14:2-4.2(a)2, an excavator shall not be liable for any damage to the State department or agency's underground facilities, provided that the excavator has:

1. Complied with this chapter;
2. Complied with all applicable requirements of the permit described at (b)3 above; and
3. Used reasonable care while excavating.

(e) An underground facility operator that is exempt from markout requirements in accordance with (b) or (c) above shall comply with all other requirements in this chapter.

#### **14:2-4.2 Underground facility operators – basic requirements**

(a) An underground facility operator shall ensure that it is fully equipped and available to receive from the One-Call center the information required under N.J.A.C. 14:2-3.2 regarding a planned excavation or demolition.

(b) Within three business days after receiving information from the One-Call center regarding a planned excavation or demolition, an underground facility operator shall do either of the following:

1. If the underground facility operator owns, operates or controls any underground facilities on the site, the underground facility operator shall mark out the site as required under N.J.A.C. 14:2-5, except if a facility is exempt from markout requirements under N.J.A.C. 14:2-4.1(b) or (c). If an underground facility operator does not own or operate a facility, but controls it, the operator is responsible for compliance with this paragraph; or
2. If the underground facility operator does not own, operate or control any underground facilities on the site, the underground facility operator shall make a reasonable effort to notify the excavator of that fact.

(c) For the purposes of (b) above, an underground facility operator shall be deemed to control all portions of an underground facility carrying metered service, which are not located on the customer's side of the meter, regardless of who owns the property. For example, if a residential electric customer owns an underground electric line, which provides electricity from the street to the customer's electric meter in an area served by overhead electric lines, the electric utility shall be deemed to control that underground electric line.

(d) An underground facility operator shall provide to the excavator specifications for supporting any underground facility on the site which requires physical support during excavation or demolition, including the type, strength and arrangement of the support. In accor-

dance with N.J.A.C. 14:2-3.3 (b)4, if the parties mutually agree, the underground facility operator shall provide such support.

(e) If an underground facility operator receives a request from the One-Call center for an emergency markout, the underground facility operator shall:

1. Immediately dispatch appropriate personnel to the site in accordance with the emergency provisions at N.J.A.C. 14:2-4.4; or
2. If the underground facility operator does not own, operate or control any underground facilities on the site, the operator shall immediately notify the excavator of that fact. If the underground facility operator cannot confirm that the excavator is aware that the underground facility operator does not own, operate or control any underground facilities on the site, the operator shall immediately dispatch appropriate personnel to the site.

(f) The requirements at (e) above shall apply to all underground facility operators that receive a request from the One-Call center for an emergency markout, regardless of whether the underground facility operator's facilities are involved in the emergency or not.

#### **14:2-4.3 Underground facility operators – markout records**

(a) An underground facility operator shall make a record of each markout that it performs. The underground facility operator shall maintain these records for seven years, and shall make them available to the Board or Board staff upon request.

(b) Each markout record shall include, at a minimum, all of the following:

1. The location of the markout, identified by street address(es) or lot and block number(s), and any other information necessary to enable a person to easily locate the site;
2. The names of all persons who performed the markout, including the names of any contractors;
3. The time and date the markout was performed;
4. The type of markout, as described at N.J.A.C. 14:2-5.3; for example, centerline markout, centerline offset markout, outside dimension markout and/or outside dimension offset markout; and
5. Whether stakes, whiskers and/or flags were used in the markout in addition to paint.

(c) In addition to the markout record required under (a) above, an underground facility operator may choose to make and maintain a visual record of the markout using photography or other visual documentation. If the underground facility operator chooses to make a photographic record, the record should:

1. Be made in color;
2. Show the entire markout;
3. Show landmarks in the vicinity of the markout in sufficient detail to enable a person to easily establish the location of the markout; and

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4. Be emblazoned with an automatic date or time stamp at the time the record is made.

(d) An underground facility operator shall submit any records required under this section to the Board upon request, on paper or electronically, as directed by the Board or Board staff.

#### **14:2-4.4 Underground facility operators – accidents and emergencies**

(a) An underground facility operator shall ensure that employees who are qualified to accept and respond to reports of accidents, damage and emergencies that involve its underground facilities, are available at all times of day and night throughout the year. Each underground facility operator shall provide the Board with the names and titles of these qualified response personnel, as part of every report required under (h) below.

(b) When an underground facility operator receives a report of an emergency, the underground facility operator shall do both of the following immediately, and in all cases within two hours after learning of the emergency:

1. Dispatch appropriate personnel to the site to assist in locating and protecting underground facilities; and
2. Take any other action necessary to assist in minimizing danger and/or damage.

(c) Each underground facility operator shall report any One-Call incident, as defined at N.J.A.C. 14:2-1.2, to the Board in accordance with the reporting procedures for reportable accidents found in the Board's rules for all utilities at N.J.A.C. 14:3-6.4. Should there be any inconsistency between the reporting procedures at N.J.A.C. 14:3-6.4 and those of this subchapter, the more stringent requirement shall govern.

(d) Whenever an underground facility operator is notified of a One-Call incident, the operator shall immediately, and in no event later than one hour after notice of the incident, contact the Board's Division of Reliability and Security at (973) 648-2066, or at (800) 817-6715 outside of business hours, and shall verbally provide the location and a brief description of the incident.

(e) If the underground facilities of a public utility are affected by an occurrence that meets both the definition of a reportable accident under N.J.A.C. 14:3-6 and a One-Call incident under this chapter, the utility shall comply with the procedures for a reportable accident under N.J.A.C. 14:3-6, and shall also notify the Board in accordance with the requirements for a One-Call incident under (d) above.

(f) As soon as possible after a One-Call incident, and in no case later than fifteen calendar days afterwards, the underground facility operator shall follow up the initial notice required under this section with a detailed written report. The written report shall include all significant facts of which the underground facility operator is aware regarding the location and cause of the incident, and the extent of any damage and/or injuries.

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(g) Each operator of an underground facility that handles natural gas or hazardous liquids shall submit a “hits report” listing any damage, emergency or One-Call incident involving the operator’s natural gas or hazardous liquids facilities. The report shall be made on forms provided by the Board on its website at [www.bpu.state.nj.us](http://www.bpu.state.nj.us), and shall be submitted to the Board by the close of business on Tuesday of the week following any two-week period in which any such damage, emergency or One-Call incident has occurred.

(h) All underground facility operators shall submit the following report(s) to the Board, as applicable:

1. An underground facility operator with facilities that have sustained any damage, as defined at N.J.A.C. 14:2-1.2, during a quarter shall submit a “hits report,” including all damage occurring to its facilities during that quarter. No quarterly report is required from an underground facility operator that has had no damage to its facilities during that quarter;
2. Any underground facility operator that has had no damage to its facilities during a year shall submit an annual “no hits” report. The “no hits” report shall be submitted on January 30<sup>th</sup> of each year; and
3. Both the quarterly and annual reports required under this subsection shall contain the contact information for the qualified response personnel described under N.J.A.C. 14:2-4.4(a).

(i) Each underground facility operator shall maintain a paper or electronic record of all damage, as defined at N.J.A.C. 14:2-1.2, to its underground facilities, including any damage reported by an excavator in accordance with N.J.A.C. 14:2-3.4, for seven years after the damage occurred.

(j) All reports and records may be submitted to the Board on paper or electronically, except where another method is required under this chapter or a Board rule or order.

## **SUBCHAPTER 5. MARKOUTS**

### **14:2-5.1 General markout provisions**

(a) When an underground facility operator is required under N.J.A.C. 14:2-2.1(b) to mark out a site, the underground facility operator shall perform the markout in accordance with this subchapter.

(b) When more than one underground facility of the same type is located within a rigid structure or envelope such as a concrete pipe or a conduit, the markout shall indicate the envelope and not the individual underground facilities inside the envelope.

(c) If an excavator has marked the perimeter of a proposed excavation or demolition site with white in accordance with N.J.A.C. 14:2-3.2(c) through (e), an underground facility operator shall mark out all of the operator's facilities that lie within the white perimeter marking, and in addition all facilities outside the white perimeter that are within ten feet of the white marking.

## **14:2-5.2 Specifications for marks used in markouts**

(a) An underground facility operator shall perform all markouts using paint. In addition, if the markout must be made on a non-firm surface including but not limited to grass, dirt, gravel or sand; or if weather or site conditions may make paint difficult to use or see, the underground facility operator shall utilize paint, and in addition shall utilize stakes and/or flags. If used, the location of any stakes or flags shall conform to the diagrams in appendix A.

(b) The underground facility operator shall ensure that all paint used for markouts has sufficient lasting properties so as to withstand vehicular traffic during the course of the excavation or demolition, but shall be sufficiently removable or degradable with time so as not to be permanent.

(c) If necessary to avoid placing paint on decorative gravel, stone or pavers, an underground facility operator may elect to substitute eight inch whiskers, as defined at N.J.A.C. 14:2-1.2, for one or more paint marks. The whiskers shall be the appropriate color, shall be laid flat on the ground in the position that would be covered by a paint mark, and fastened to the ground with a nail or other appropriate fastener. The required letter designation code and other numbers and letters may be placed on a flag. An underground facility operator shall not use whiskers as a substitute for a stake or flag.

(d) All references in this subchapter to paint shall be construed to include any marking material that makes an equivalent mark and meets all other applicable requirements of this chapter.

(e) An underground facility operator shall perform all markouts in a manner that will clearly indicate the location and direction of each underground facility.

(f) An underground facility operator shall place all marks used to indicate a particular facility at intervals of twenty-five feet or less. However, the underground facility operator shall place marks closer together than twenty-five feet, if necessary to clearly indicate the location and direction of the underground facility. For example, site conditions or directional changes of the underground facility may necessitate a shorter distance between marks in order to clearly indicate the location and direction of an underground facility.

(g) All paint marks used in markouts shall be one to two inches wide and eight to ten inches long, unless otherwise specified in this chapter. All letters and numbers used in painted markouts shall be six to eight inches high, unless otherwise expressly specified in this chapter.

(h) An underground facility operator shall arrange all marks, except for the arrowhead marks in an offset markout, in a line following or paralleling the course of the underground facility. The arrowhead marks used in an offset markout shall be perpendicular to the course of the underground facility.

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- (i) All markouts shall conform to the diagrams set forth in Appendix A to this subchapter.
- (j) Markouts shall indicate the type of underground facility, using the following colors and letter designation codes in Table A below:

Note: This is a courtesy copy of the rules. The official version is found in the New Jersey Administrative Code at N.J.A.C. 14:2. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

**TABLE A**  
**COLORS AND LETTER DESIGNATION CODES FOR MARKOUTS**

<b>Facility or Product</b>	<b>Letter Designation Code</b>	<b>Color</b>
Water Systems	W	Safety Precaution Blue
Slurry Systems	SP	Safety Precaution Blue
Sewer Lines	S	Safety Green
Telephone and Telecommunications	T	Safety Alert Orange
Fiber Optic Cable	FOC	Safety Alert Orange
Cable Television	TV	Safety Alert Orange
Police and Fire Communications	FA	Safety Alert Orange
Electric Power Distribution and Transmission/Municipal Electric	E	Safety Red
Traffic Control (communications)	TC	Safety Alert Orange
Traffic Control (power)	TC	Safety Red
Gas Distribution and Transmission	G	High Visibility Safety Yellow
Petroleum products, Oil Distribution and Transmission	PP	High Visibility Safety Yellow
Steam	ST	High Visibility Safety Yellow
Hazardous liquids/Chemicals	CH	High Visibility Safety Yellow
Excavation or demolition boundaries		White Pink

(k) The underground facility operator shall ensure that all colors used in markouts meet the standards in Standard Z53.1 of the American National Standards Institute, Inc., as amended and supplemented, which is incorporated herein by reference and is available at <http://www.nema.org/stds/complimentary-docs/upload/Z535.1.pdf>.

- (l) The underground facility operator shall ensure that all flags used in markouts shall be:
1. Made of plastic or other equally durable and weatherproof material;
  2. Rectangular, four inches by five inches in nominal size;
  3. Attached to a staff that is a minimum of twenty-four inches long;
  4. Not less than eighteen inches of the staff of the flag shall be exposed above the surface of the ground;
  5. Placed at the top of the staff;
  6. Marked with a letter designation code indicating the type of underground facility in accordance with Table A in N.J.A.C. 14:2-5.2. The letters shall be at least one inch high;
  7. Marked with the underground facility operator's initials or logo in black letters or symbols at least one inch high; and

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8. Marked with the underground facility operator's telephone number or the telephone number of the New Jersey One-Call Damage Prevention Center (811 or 1-800-272-1000), in letters at least one inch high.

(m) The underground facility operator shall ensure that all stakes used in markouts shall be:

1. Two inches by two inches by twenty-four inches in nominal dimension;
2. Colored in accordance with the color coding requirements of N.J.A.C. 14:2-5.2. The color shall cover the top six inches of the stake;
3. Marked with a letter designation code indicating the type of underground facility in accordance with Table A in N.J.A.C. 14:2-5.2. The letters shall be at least one inch high;
4. Marked with the underground facility operator's initials or logo in black letters or symbols at least one inch high; and
5. Not less than eighteen inches of the stake shall be exposed above the surface of the ground.

(n) Stake markouts and plastic flag markouts shall conform to the diagrams in Appendix A, figures 1 and 6.

(o) Markouts of utility junctions, crossings, changes of direction, dead ends, and other configurations shown in Appendix A, figure 6, shall comply with the diagrams in figure 6.

### **14:2-5.3 Types of markouts**

(a) There are four types of markouts, as follows:

1. A centerline markout. A centerline markout is required for an underground facility that is twelve inches or less in nominal outside dimension;
2. A centerline offset markout. A centerline offset markout may be used only when both of the following criteria are met:
  - i. The underground facility is twelve inches or less in nominal outside dimension; and
  - ii. Site conditions make it impossible to adequately markout the centerline of the underground facility;
3. An outside dimension markout. An outside dimension markout is required for an underground facility that is more than twelve inches in nominal outside dimension; and
4. An outside dimension offset markout. An outside dimension offset markout may be used only when both of the following criteria are met:
  - i. The underground facility is more than twelve inches in nominal outside dimension; and
  - ii. Site conditions make it impossible to adequately mark out the centerline or outside walls of the underground facility.

#### **14:2-5.4 Centerline markouts**

(a) An underground facility operator shall utilize a centerline markout to indicate an underground facility that is twelve inches or less in nominal outside dimension, unless exceptional site conditions would either make it impossible to clearly mark the centerline of the underground facility in accordance with this section, or would make it impossible for the excavator to see the markings in a centerline markout. In a case with such exceptional site conditions, an underground facility operator may utilize a centerline offset markout, described at N.J.A.C. 14:2-5.6.

(b) A centerline markout shall meet all of the following requirements:

1. The markout shall consist of paint marks that run parallel to the course of the underground facility, with the eight inch to ten inch side of each paint mark over the center line of the underground facility;
2. The marks shall be placed as directly as possible over the center line of the underground facility, and in no case shall the marks be more than eighteen inches away from the point on the ground that is directly above the center line of the underground facility;
3. A minimum of three separate paint marks shall be made for each underground facility. Additional marks shall be placed along the course of the underground facility as needed to clearly identify the location of the facility;
4. The marks shall be the appropriate color as indicated in Table A in N.J.A.C. 14:2-5.2; and
5. The appropriate letter designation code from Table A in N.J.A.C. 14:2-5.2, and the nominal outside dimension of the underground facility in inches, shall be centered between the paint strokes. Whenever more than one facility is located within a rigid envelope, the markout shall state the dimension of the envelope, not of the individual facilities.

(c) Illustrations of a centerline markout are set forth in Appendix A, figures 2 and 6.

#### **14:2-5.5 Outside dimension markouts**

(a) An underground facility operator shall utilize an outside dimension markout to indicate an underground facility that is more than twelve inches in nominal outside dimension, unless exceptional site conditions would either make it impossible to clearly mark the outside walls of the underground facility in accordance with this section; or would make it impossible for the excavator to see the markings in an outside dimension markout. In a case with such exceptional site conditions, an underground facility operator may utilize an outside dimension offset markout, described at N.J.A.C. 14:2- 5.6.

(b) An outside dimension markout shall meet all general requirements for markouts under N.J.A.C. 14:2-5.1 and 5.2, and in addition shall meet all of the following requirements:

1. The markout shall consist of pairs of parallel paint marks, with marks over each outside wall of the underground facility, but no more than 18 inches from either outside wall of the underground facility;

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2. A minimum of three separate pairs of parallel paint marks shall be made for each underground facility; and
3. The following shall be placed within each pair of parallel linear marks, centered in the space between the two marks:
  - i. The appropriate letter designation code from Table A in N.J.A.C. 14:2-5.2;
  - ii. Numbers indicating the nominal outside dimension of the underground facility in inches; and
  - iii. If a non-firm surface requires stakes and/or flags in addition to paint in accordance with N.J.A.C. 14:2-5.2(a), a stake shall be placed on each paint mark, and a flag shall be centered between the two paint marks, over the required numbers and letters.

(c) Illustrations of an outside dimension markout are set forth in Appendix A, figures 3 and 6.

#### **14:2-5.6 Offset markouts**

(a) An underground facility operator shall utilize an offset markout only if exceptional site conditions make it impossible to clearly mark the underground facility with a centerline markout under N.J.A.C. 14:2-5.4 or an outside dimension markout under N.J.A.C. 14:2-5.5.

(b) An offset markout shall be made with paint on a firm surface.

(c) An offset markout symbol shall consist of the following:

1. Two T-shaped paint marks that:
  - i. Are one inch to two inches in width and eight inches to ten inches in length;
  - ii. Have the top of each T running parallel to the centerline of the underground facility; and
  - iii. Have an arrowhead on the leg of each T, pointing in the direction of the underground facility;
2. The following shall appear above the arrow:
  - i. The appropriate letter designation code from Table A in N.J.A.C. 14:2-5.2;
  - ii. Numbers indicating the nominal outside dimension of the underground facility in inches; and
  - iii. Numbers indicating the distance from the centerline or outside wall of the underground facility to the top line of the T, measured in inches; and
3. The letters "OFF" shall appear in capital letters below the arrow.

(d) An offset markout shall consist of a pair of offset markout symbols, as described in (c) above. The base of each symbol shall be over the offset center line of the underground facility, but no more than 18 inches horizontally, plus the offset distance, from either wall of the underground facility. A minimum of three separate offset symbols shall be made for each underground facility.

(e) Illustrations of an offset centerline markout are set forth in Appendix A, figures 4 and 6.

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(f) An offset markout for an underground facility of greater than 12 inches nominal outside dimension shall consist of a pair of parallel offset markout symbols as described in (c) above. The base of each symbol shall be over one offset outside wall of the underground facility, but no more than 18 inches horizontally, plus the offset distance, from either wall of the underground facility. A minimum of three separate offset paint markouts shall be made for each underground facility.

(g) Illustrations of an offset outside dimension markout are set forth in Appendix A, figures 5 and 6.

(h) The distance between an underground facility and an offset markout shall be as small as possible while enabling an excavator to clearly see the location of the underground facility. If site conditions permit this distance to be eighteen inches or less, the underground facility operator shall not utilize a centerline offset markout but instead shall utilize a centerline markout or outside dimension markout.

## **SUBCHAPTER 6. VIOLATIONS, PENALTIES, ENFORCEMENT**

### **14:2-6.1 Violations in general**

(a) Whenever it appears to the Board that a person has violated any provision of this chapter, or an order adopted pursuant to this chapter, the Board may issue an order:

1. Specifying the provision or provisions of which the person is in violation;
2. Citing the action which constituted the violation;
3. Ordering abatement of the violation; and
4. Giving notice to the person of the right to a hearing on the matters contained in the order.

(b) An order issued under (a) above shall be effective upon receipt, and any person to whom such order is directed shall comply with the order immediately.

(c) If statutory amendments are enacted after {effective date of this chapter}, which authorize additional or increased penalties or remedies for violation of this chapter, the Board shall have the authority to apply such penalties or remedies upon the effective date of the statutory amendment.

### **14:2-6.2 Injunction, civil penalties**

(a) The Board may institute an action or proceeding in the Superior Court for injunctive and other relief for any violation of this chapter, or of an order issued pursuant to this chapter.

(b) In an action instituted under (a) above, the Board may seek one or more of the following:

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1. A temporary or permanent injunction, in accordance with (c) below;
2. A civil penalty, in accordance with (d) below;
3. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation; and/or
4. Assessment of the violator for the reasonable costs of preparing and litigating the case.

(c) If a person whose repeated failure to comply with this chapter constitutes a threat to public safety, the Board or an affected underground facility operator may institute an action in the Superior Court to enjoin the person from engaging in any further excavation or demolition within New Jersey, except under such terms and conditions as the Superior Court may prescribe to ensure public safety.

(d) An underground facility operator or an excavator, or the One-Call System operator, that violates any provision of this chapter or an order adopted pursuant thereto, shall be liable to a civil penalty not to exceed the amount set forth in N.J.S.A 48:2-88, as amended or supplemented, except as provided at (e) below. As of {effective date of this chapter} N.J.S.A 48:2-88 provided for a 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.

(e) Notwithstanding any provisions of this chapter or N.J.S.A 48:2-88 to the contrary, a person who is determined by the Board, after notice and opportunity to be heard, to have violated any provision of this chapter, the Underground Facility Protection Act, or an 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 the amount set forth in N.J.S.A 48:2-86, as amended or supplemented. As of {effective date of this chapter} N.J.S.A 48:2-86 provided for a penalty not to exceed \$25,000 for each violation for each day the violation continues, except that the maximum civil penalty may not exceed \$500,000 for any related series of violations.

(f) Any civil penalty imposed pursuant to this section 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 may determine appropriate concerning a particular violator.

(g) 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" (N.J.S. 2A:58-1 et seq.).

(h) Pursuit of any remedy specified in this subchapter shall not preclude the pursuit of any other remedy, including any civil remedy for damage to an operator's underground facilities

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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.

#### **14:2-6.3 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 this chapter shall be prima facie evidence in any civil or administrative proceeding that the damage was caused by the negligence of the excavator or responsible contractor, as applicable, that performed the excavation or demolition.

#### **14:2-6.4 Civil penalties to the State**

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