

**S T A T E O F R H O D E I S L A N D**  
**IN GENERAL ASSEMBLY**  
**JANUARY SESSION, A.D. 2009**

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS -- UNDERGROUND UTILITY  
FACILITIES

It is enacted by the General Assembly as follows:

SECTION 1. Sections 39-1.2-1, 39-1.2-5, 39-1.2-7, 39-1.2-8, 39-1.2-12 and 39-1.2-13 of the General Laws in Chapter 39-1.2 entitled "Excavation Near Underground Utility Facilities" are hereby amended to read as follows:

**39-1.2-1. Definitions.** -- As used in this chapter:

- (1) "Administrator" means the administrator of the division of public utilities and carriers.
- (2) "Approximate location of underground facilities" means a strip of land extending not more than one and one-half (1 1/2) feet on either side of the underground facilities.
- (3) "Association" means the group of public utilities formed pursuant to section 39-1.2-4 for the purpose of receiving and giving notice of excavation activity within the state.
- (4) "Damage" means and includes but is not limited to the substantial weakening of structural or lateral support of a utility line, penetration, or destruction of any utility line protective coating, housing, or other protective device or the severance, partial or complete of any utility line.
- (5) "Demolition" means the wrecking, razing, rending, moving, or removing of any structure.
- (6) "Excavation" means an operation for the purpose of movement or removal of earth, rock, or other materials in or on the ground, or otherwise disturbing the subsurface of the earth, by the use of powered or mechanized equipment, including but not limited to digging, blasting, auguring, back filling, test boring, drilling, pile driving, grading, plowing in, hammering, pulling in, trenching, and tunneling; excluding the movement of earth by tools manipulated only by human or animal power and the tilling of soil for agricultural purposes.
- (7) "Governing authority" means the permit issuing authority.
- (8) "Person" means an individual, partnership, corporation, association, or a public utility, including a person engaged as a contractor by a public agency and including a public agency.
- (9) "Public agency" means the state or any political subdivision thereof, including any governmental agency.
- (10) "Public utility" means the owner or operator of underground facilities for furnishing electric, gas, telephone, or water service as defined in section 39-1-2(20); and also means and

includes, for the purposes of this chapter only, electric transmission companies and non-regulated power producers, as defined in section 39-1-2(13) and (19); [any cable television service](#); and any water company which voluntarily becomes a member of the association provided for under section 39-1.2-4.

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

(12) ["Abandoned utility facilities" means any known underground or submerged utility line or facility that has been permanently taken out of service. For excavation purposes the abandoned underground utility facilities should always be considered to be active utility service.](#)

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

**39-1.2-5. Notice of excavation.** -- Except as provided in section 39-1.2-9, any person, public agency or public utility responsible for excavating within one hundred feet (100') or for discharging explosives within one hundred feet (100') of a public utility facility shall notify the association of the proposed excavation or discharge by telephone at least [seventy two \(72\)](#) hours, excluding Saturdays, Sundays, and holidays, but not more than thirty (30) days before commencing the excavation or discharge of explosives. Actual excavation must thereupon [commence](#) within thirty (30) days [and be completed within sixty \(60\) days](#), including Saturdays, Sundays and holidays, or the excavator must re-notify the association. Each public utility shall, upon receipt of each notice of excavation, mark within [seventy-two \(72\)](#) hours or, where [applicable in accordance with section 39-1.2-12](#), re-mark within [forty-eight \(48\)](#) hours, the location of all underground facilities. [If an excavator determines that a public utility facility has been mismarked, the excavator may notify the association and the appropriate public utility shall remark no later than three \(3\) hours after receipt of notification from the association.](#) The failure to mark or re-mark the location of all underground facilities upon each notice of excavation shall constitute a separate violation of this chapter. Where an excavation is to be made by a contractor as part of the work required by a contract with the state or with any political subdivision thereof or other public agency, for the construction, reconstruction, relocation, or improvement of a public way or for the installation of a railway track, conduit, sewer, or water main, the contractor shall be deemed to have complied with the requirements of this section by giving one such notice as required by this section except, when unanticipated obstructions are encountered, setting forth the location and the approximate time required to perform the work involved to the association. In addition, the initial notice shall indicate whether the excavation is anticipated to involve blasting and if so, the date on which and specific location at which the blasting is to occur. If after the commencement of an excavation, it is found there is an unanticipated obstruction requiring blasting, the excavator shall give at least four (4) hours notice to the association before commencing the blasting. When demolition of a building containing a public utility facility is proposed, the public utility or utilities involved will be given written notice by registered mail at least ten (10) days prior to the commencement of the demolition of the building. All notices shall include the name, address, and telephone number of the entity giving notice, the name of the person, public agency, or public utility performing the

work, and the commencement date and proposed type of excavation, demolition, or discharge of explosives. The association shall immediately transmit the information to the public utilities whose facilities may be affected. An adequate record shall be maintained by the association to document compliance with the requirements of this chapter.

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

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

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

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

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

UTILITY AND TYPE OF PRODUCT SPECIFIC GROUP IDENTIFYING COLOR

Electric power distribution and transmission	Safety Red
State and municipal electric systems	Safety Red
Gas distribution and transmission	High Visibility Safety Yellow
Dangerous materials, product line	High Visibility Safety Yellow
Telephone and telegraph systems	Safety Alert Orange
Water systems	Safety Precaution Blue
<u>Cable antenna television</u>	<u>Safety Alert Orange</u>
<u>Premark</u>	<u>White</u>

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

**39-1.2-8. Notice in emergency.** – (a) In the event of any emergency posing a threat to life, public health, public safety or property, or which may require immediate correction in order to continue the operation of a major industrial plant, or to assure the continuity of public utility service, excavation, maintenance, or repairs may be made without using explosives upon notice and advice thereof given to the association as soon as it is determined that an emergency exists. The excavator shall thereafter employ any means necessary, excluding blasting, to insure that the underground public utility facilities in the area of the excavation shall not be damaged.

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

**39-1.2-12. Maintenance of utility markings.** -- After a public utility has marked its underground facilities in accordance with the provisions of section 39-1.2-7, the excavator shall be responsible for maintenance of the designated markings. In the event the markings are obliterated, destroyed, or removed, the utility shall, within forty-eight (48) hours following the receipt of a request, remark the location of its facilities.

**39-1.2-13. Penalties.** -- (a) Any person or utility who violates any provision of this chapter shall be subject to a civil penalty of no more than three hundred fifty dollars (\$350) for the first offense and not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) for any subsequent offense within a twelve (12) month period. The administrator of the division of public utilities shall assess the civil penalty against the person or utility who is determined to have committed the violation. All penalties recovered shall be paid into the general fund of the state. This chapter shall not be construed to affect any civil remedies for personal injury or property damage (including underground utilities), except as otherwise specifically provided for in this chapter.

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

SECTION 2. Chapter 39-1.2 of the General Laws entitled "Excavation Near "Underground Utility Facilities" is hereby amended by adding thereto the following section:

**39-1.2-1.1. Findings.** – The general assembly finds and declares that:

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

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

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

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

SECTION 3. Chapter 45-14 of the General Laws entitled "Sewage Charges" is hereby amended by adding thereto the following section:

**45-14-1.1. Recording of sewer system.** – Starting on January 1, 2012, all cities and towns that own, operate, manage or control a sewer system shall require as-built drawings and plans on any new sewer main extension to be submitted to the sewer authority. In addition, an as11 built record drawing and plans shall be submitted to the sewer authority for any sewer main upgrade or repair that deviates in horizontal or vertical alignment from the existing sewer main horizontal or vertical alignment. The preparation and submission of such as-built drawings and plans shall be the responsibility of the person that each city and town has designated either by ordinance or by contract. All cities and towns shall determine the form in which such drawings and plans shall be submitted.

SECTION 4. Chapter 46-25 of the General Laws entitled "Narragansett Bay Commission" is hereby amended by adding thereto the following section:

**46-25-19.1. Recording of sewer systems.** – Starting on January 1, 2012, the commission shall maintain as-built drawings and plans on any new or upgraded sewer main it owns and operates. Such as-built drawings and plans shall be the responsibility of the person that the commission has designated and shall be in a form designated by the commission.

SECTION 5. This act shall take effect November 1, 2009.