

Potential Items for Title 12 Re-Write

§12-101 – Definitions

1. Create a definition for “Emergency Ticket” to help curb abuse
2. Should the definition for “Owner” under (j) (1) & (2) be expanded to include developers, mall owners, HOA’s, hospitals, Boards of Education, colleges and universities, etc.?
3. Should, under (o) (3) now include storm drains removing that exemption?
4. Should a definition be added for a cross bore and should a section be established to address cross bores?
5. Should a definition be added for “Clear Evidence”?
6. Should (o) (3) be eliminated from the Statute?

§12-103 – Scope of Subtitle

The homeowner exemption is going to have to be addressed per PHMSA

§12-112 – Enforcement

Do we need to address giving the Authority, it’s employees, Authority members, or other subscriber personnel the power and authority to stop someone from performing an excavation or demolition if they do not have an active valid Miss Utility Ticket and require the Authority to file a Formal Complaint against the violator?

§12-113 – Hearing Procedure

Under (c) should subpoena powers be expanded to include documents?

If a subpoena is issued for a probable violator to appear before the Authority for a hearing, the probable violator does not appear, the hearing is held and a decision is rendered against the Probable Violator; should the Authority have legislative authority to collect fines through the Civil Court system if the probable violator does not pay the fine within the designated time period.

Should the Authority have the legislative authority to charge attorney fees and interest on unpaid balances?

Should the Authority have the legislative authority to charge the losing party in a hearing all processing costs for that hearing?

§12-117 – Fund Established

Should the use of funds in the Maryland Underground Facilities Damage Prevention Education and Outreach Fund be expanded to include certain Authority expenses?

§12-121 – Emergency Excavation and Demolition

There appears to be continued abuse of the Emergency Ticket. This section ought to be looked at for possible changes to curb that abuse.

We need to look at requiring a quicker response by facility owners/marketing companies to an Emergency Ticket. Right now the statute doesn't address it so the normal 2-day response is permitted. We need to look at a 2-hour to 4-hour required response/marketing. This should be applied to Re-Mark /Tickets and/or Repeat Notifications as well.

§12-124 – Notice to One-Call System

Clarify "person" in (a) so that it's clear that one cannot perform an excavation or demolition under someone else's ticket. Address rental equipment issue.

Should some language be added to the statute that requires each ticket to contain a description of the work area under "Extent of Work" that is specific and unique to the ticket only? Some large companies that have multiple tickets each day file their tickets by computer and use the exact same language on each ticket to describe the work area under "Extent of Work".

§12-126 – Marking Requirements

The "...within 5 feet of the horizontal plane.." language on marking requirements has been used by probable violators as a defense for not marking tickets. Should this language be changed to eliminate that defense.

It's been suggested that reference is made in the statute to the "Codes" established and maintained by the Subscribers Committee and that communication occur by and between the facility owner (or their contract locator) and the person performing the excavation or demolition whenever a code other than "1" or "2" is used.

It's been suggested that the Marking Guidelines be included in Title 12 by reference much like the APWA Color Code. That way if the Guidelines change, the statute will automatically be executed.

It's been suggested that a simple written agreement be executed by and between the Contractor and Facility Owner/Locating Contractor when a delay is instituted or a Code 5 is entered on the ticket. Too much he said/she said with no way to prove if the parties communicated.

§12-127 – Excavation After Notice

It's been suggested that the person who is performing the excavation or demolition have a copy of the Miss Utility Ticket on-site during all phases of the excavation or demolition.

Under (e) of this section, it's suggested that we change "Effect of knowledge of unmarked facility" to "Effect of knowledge of unmarked and marked facilities" and make appropriate changes in the rest of subtitle (e).

It's been suggested that the Facility Owner and Locating Contractor be held to the same "Clear Evidence" standard as the Contractor. Right now the Contractor is the last line of defense and liability if a facility is not marked (Clear/No Conflict) when a facility actually exists in the field.

§12-128 – Reimbursement

It's been suggested that this subtitle be removed from the statute since it can serve as a reason for someone not to call the Call Center and proceed without a Miss Utility Ticket.

§12-129 – Detectible Wires

It's been suggested that §12-129 be expanded to the installation of utilities in the public right of way.

§12-134 – Injunctive Actions

It's been suggested the Authority be given injunctive action authority as well.

§12-135 – Civil Penalties

- Should we consider increasing the maximum fines?
- Under (a) (2) change "...the Authority may:" to "...the Authority shall:".

- It's been questioned that §12-135 (a) (3) does not allow the Authority to assess a \$2,000.00 fine for any violation of Part IV if the probable violator has already been fined for a No Call under §12-124 (a).
- It's been suggested that under §12-135 (a) (3) a \$4,000.00 fine be added to the statute for "...each subsequent offense" much the same as allowed under the statute for a No Call under §12-124 (a).

General

1. Should the "Tolerance Zone" on Marking Requirements and Duties of Excavator be changed from 18" to 24".
2. The statute requires that the person doing the excavation or demolition secure a Miss Utility Ticket prior to beginning that excavation or demolition. Too many times small contractors and subcontractors are threatened by the General Contractor and/or Owner to begin the excavation or demolition without the Miss Utility ticket because it will delay the work. In cases like that, the General Contractor and/or Owner are not liable for such action under the statute. They hide under their contract with the contractor or subcontractor. Is there a way to fix that?
3. Should mandatory reporting of damage to the Authority or to the Call Center be added to the statute? And, if so, should the Authority be required to track those damages in a software program like "DIRT" established by the CGA? Action in this item will help Maryland come into compliance with the 9 Elements and allow the Authority to establish a baseline to measure their effectiveness.
4. Suggestions have been made that, under the appeal process to the Circuit Court, language ought to be added to the statute allowing the winner of the appeal to recover attorney's fees. That is a double edged sword
5. Recovery of downtime for contractors for mis-marks and no-marks.
6. We have an incidence where Contractor #1 is calling in a ticket for Contractor #2 (their subcontractor) using Contractor #2's name on the ticket but Contractor #1's contact information on the ticket.
7. Required white lining; item 1g of 2014 Characterization Tool
8. Required marking symbols; item 1i of 2014 Characterization Tool

- a. Reference an existing symbol marking standard; i.e. Best Practices or DPC Marking Guidelines
- 9. Contractor to notify facility owner directly or through the One Call Center when a marked facility can't be found; item 1n of 2014 Characterization Tool
- 10. Contractor discovering or causing damage must report damage to One Call Center...Mandatory Reporting; item 1r of 2014 Characterization Tool
- 11. Mandatory Reporting to CGA DIRT Tool; item 9c of 2014 Characterization Tool