



Maryland Underground Facilities Damage Prevention Authority

To: Title XII Re-write Steering Committee Members et.al.

From: Jim Barron, MUFDPDA

CC:

Date: September 7, 2018

Re: August 30, 2018 Meeting Notes

Please note that if you have any language you would like to see inserted into the draft statute, please submit it to Susan @ susan.stroud@mddpa.org at least two days before the next meeting so she can accommodate your request and have the material ready for group review.

At the twenty-fourth meeting of the Title XII re-write, the following items were discussed:

Pending:

- §12-121(c) the life of an Emergency ticket shall not exceed 24 hours from the time of the one-call system notification. Was green, is now red for further discussion, prompted by the plumber's group.
- §12-127 Duties of Excavator (d)(1)(ii) Notification of discovery or cause of damage. –

(1) The person performing an excavation or demolition shall promptly report [immediately shall notify] to the owner-member of the facility if the person discovers or causes any damage to or dislocation or disturbance of an underground facility in connection with the excavation or demolition; and

(i) the owner-member shall report those damages and any other damage information on a quarterly basis to the Maryland Underground Facilities Damage Prevention Authority for the purposes of assessing the effectiveness of the State Damage Prevention Program effectiveness in order to comply with the United States Department of Transportation, division of Pipeline and

Hazardous Materials Safety Administration (PHMSA) CFR Part 198.51- 198.61
- rules for the determination of adequacy***

§ 12-129. ~~[Detectable wires]~~ UTILIZING DETECTABLE OR LOCATABLE METHODS ~~[for]~~ WHEN connecting buildings to water supply, UNDERGROUND STORM DRAIN SYSTEMS ~~[or]~~, sewerage systems or other applicable devices as defined in §12-101(z)(2) of this subtitle.

(a) In general. -- Subject to subsection (c) of this section, any new OR replacement piping that is buried or installed, for the purposes of connecting a building to a water supply system, underground storm drain systems, ~~[or a]~~ sewerage systems or other applicable devices, shall be buried or installed with a wire OR EQUIVALENT PRODUCT OR TECHNOLOGY that makes the piping detectable OR LOCATABLE.

- AUC proposals:

1) ALL utilities owners must mark within 48 hours – no consensus

2) if a damage occurs as a result of a facility owners failure to mark after notification, the contractor will not be held liable for the repair costs. - no consensus

3) §12-101 (d) Clear Evidence – clear evidence must be within the “extent of work” as delineated on the ticket. - no consensus

4) §12-121 –Emergency tickets – must last at least 4 days or for the life of the ticket, this is due to the delays caused by some facility owners delays when marks are requested. - no consensus

5) Attorney Fees – Change the requirement of fee reimbursement to “the losing party” or each person pays their own fees. Does this refer to filing fees?

6) §12-134 – Injunctive actions – A contractor may file for a *writ of mandamus* if: anyone can file an injunction now

(3) a facility owner or its contract locator fails to respond in good faith or in a timely manner to a request for marking the location of its underground facilities. no consensus

7) §12-135 – Civil Penalties – add to section (a)(1) or an owner who fails to respond in good faith to a request by a contractor to mark the location of its underground facilities, resulting in damages, dislocations, or disturbances to an underground facility, is deemed negligent and is subject to a civil penalty assessed by the Authority not exceeding: not yet addressed by the working group

Suggested by Peter Ligon (AUC):

“Clear-No Conflict” language that Verizon has been using in their locate responses. To address that, we proposed at the last conference that 12-126(a) should simply say:

(a) In general. -- An owner-member or its contract locator shall mark its underground facility if a proposed excavation or demolition specified in the "Extent of Work" contained in the ticket:

- (1) is within 5 feet of the horizontal plane of the underground facility; or
- (2) because of planned blasting, is so near to the underground facility that the underground facility may be damaged or disturbed.

Suggested by Dave Openshaw (AUC):

"mechanized equipment" should not include hand-held power tools used to remove concrete and/or asphalt surface paving during utility locating. It seems to us that the crafters of this law could not have intended to prohibit the use of a hand-held pneumatic pavement breaker or a hand-held, gas/air/hydraulic-powered cut-off saw, when used to remove the concrete and/or asphalt pavement in order to begin a test pit excavation that will be advanced below the pavement layer with hand tools or soft-dig methods. Any utility that might be damaged during such work with a hand-held power tool would be so far out of standards for cover depth that it would be in violation on the part of the facility owner. Addition to 12-102 Definitions:

p) Mechanized Equipment - "Mechanized Equipment" means any power-operated tool or machine used for excavation, demolition, drilling, cutting or other displacement of the ground except such tools that are carried by and manually controlled, started and stopped by an individual worker at the point of contact with the ground and that cannot penetrate the contact surface more than 10".

There is also the issue of pavement milling, which is mechanized equipment ambiguity that by definition is doing excavation and demolition with Mechanized Equipment, yet these contractors do not stop at the marks. So perhaps our definition should include at the end: "and pavement milling and profiling machines" -- the working group could not reach consensus on this suggestion.

Progress:

- §12-101(j)(3) – new owner language, to exempt "owner or lessee or occupant on a single-family property"
- § 12-101 (j) Detectable and Locatable Underground Facilities. –
 - (1) Detectable underground facility means any underground facility utilizing an underground location device that is installed underground, such as, but not limited to electronic markers or traceable wires that are capable of being detected above ground with electronic locating devices.
 - (2) Locatable underground facility means an underground facility that can be identified or discovered by, but not limited to, installation records, vertical lines or facility markers, locator tape, manual location techniques, surface extensions of underground facilities or any visible indicators that a facility or structure is buried underground in the immediate vicinity.
- §12-101 (0)(3) – Removal of the storm sewer exemption from the statute was unanimously approved. Directional drilling has created the potential for

health and safety issues for municipal and county utility maintenance workers as well as the general public.

- §12-101 Primary Contractor, formally “Responsible Contractor” - definition has been approved.
- §12-101(z) (2) "Underground Facility" means any item of public or private property which is buried or placed below ground or submerged for use in connection with the storage or conveyance of water, sewage, telecommunications, electric energy, cable television, oil, petroleum products, gas, or other substances, and includes but is not limited to pipes, sewers, combination storm/sanitary sewer systems, storm drain systems, geothermal systems, conduits, cables, valves, lines, wires, manholes and attachments.
- Trenchless Technology definition has been approved (§12-101 (x))
- §12-101(new z) (3) Underground Facilities definition added “applies only to a complete replacement of the piping; and does not apply to a repair or a partial replacement of piping”
- **§ 12-103. Scope of subtitle** New §12-103 addresses locatable and detectable underground facilities.

As of October 01, 2020/21, all newly installed Underground Facilities as defined in §12-101(aa)(1) of this subtitle, except as defined in §12-129 of this subtitle, shall be detectable or locatable; and

(i) APPLIES TO A COMPLETE REPLACEMENT OF an existing underground facility; AND

(ii) IF THE EXISTING UNDERGROUND FACILITY WAS PREVIOUSLY LOCATABLE OR DETECTABLE, THEN IT MUST BE RESTORED TO ITS LOCATABLE OR DETECTABLE STATUS.

- §12-103 – Scope of Subtitle – the homeowner exemption has been removed per PHMSA’s request.
- §12-111—Funding. Language has been approved to allow for the recoupment of administrative costs associated with the NPV process. The fee schedule will be posted on the Authority website for transparency.
- A definition for “Mark” has been added to the definition section §12-101 of the statute.
- §12-123 (a)(1)(i) owns or operates an underground facility [;], regardless of the size or scope of the facilities and whether or not the owner uses the facilities to sell or transmit to third parties or uses the facilities for its own purposes;
- § 12-107 -- Membership new (g) tightens up the appointment process by assigning time limits to the stakeholder nominators with regard to replacements. will review this language at their 7/11/18 meeting.
- §12-125 – Repeat notification -- the new heading for this section is to be “Re-notification” – added new § (b) if a person discovers the marker is obliterated,

destroyed or removed they shall notify the call center to request, all or part of the current scope of work, of a valid ticket be re-marked.

- §12-126 Emergency Tickets -- in reference to emergency tickets and delayed response utilizing a code 5 scenario, the term “documented” has been added to the subsection as a means of proof that a conversation or dialogue occurred. There is still no agreement regarding a repository for these agreements, but language was approved on the agreement.
 - (ii) work with the person that intends to perform the excavation or demolition to develop a mutually [agreeable] documented agreement [schedule] for marking the underground facility.
- §12-127 Duties of excavator - add to (C)(4)(e) or discovers clear evidence.
- §12-127(c)(3)(i) under duties of excavator, trenchless technology guidance has been added to the statute.
- §12- 127 Excavation after notice that facilities marked or not in the vicinity. Is now titled “Requirements prior to performing an excavation or demolition” – language has also been added to this subsection that strengthens the “clear evidence” portion of the statute.
- §12-127- Excavation after notice that facilities marked or not in vicinity.
 - (i) If the marker is obliterated, destroyed, or removed, the person shall [repeat the notification required] request the area be re-marked as required under §12-[124]125 (b) of this subtitle; and
 - (ii) the person shall not, under any circumstance, replace or repair marks.
- Approved New section §12-130 – Primary Contractors and Temporary excavators – The concept and definitions have already been approved in §12-101, a new subsection has been created in order to delineate how the two definitions operate.
- §12-135 - Civil Penalties – changes were approved by the Authority and agreed to by the committee. This section now codifies the requirement set down by the Maryland Court of Special Appeals when assessing penalties. The fines will not increase but the ability to double fine for violations other than “failure to call for a ticket” and can be doubled if the violator does not fulfill their obligations in the proscribed time period. Also, a person who abuses the Emergency Ticket could now be subject to maximum penalties.
- § 12-129. [Detectable wires] Utilizing Detectable or locatable methods [for] when connecting buildings to water supply, storm drain systems or sewerage systems.
 - (a) In general. -- Subject to subsection (c) of this section, any new or replacement piping that is buried or installed, for the purposes of connecting a building to a water supply system, storm drain system [or a] sewerage system, or other applicable devices shall be buried or installed with a wire or equivalent product or technology that makes the piping detectable or locatable.

- “Call before you Clear”- has now been addressed in the reworked designer ticket section Part V §12-131new (d), the designer ticket section has been heavily amended and is now called “Non-excavation ticket request”.
- Part V – Designer Requests - §12-131 has been amended to mirror the DC re-write language. It has been agreed that the section (§12-131(c) that refers TO SURVEYS, DRAWINGS ETC. BE STRICKEN ENTIRELY. THE NEW §12-131(C) READS(C) THE CALL CENTER WILL PROVIDE THE DESIGNER REQUESTING A DESIGN NOTICE, A CONTACT MEANS FOR EACH UTILITY WITHIN TWO BUSINESS DAYS; AND (I) UNDERGROUND FACILITY OWNERS WILL MAINTAIN CURRENT CONTACT INFORMATION FOR DESIGNERS TO CONTACT.
- §12-135(3)(ii) SUBSEQUENT VIOLATIONS – The group approved a 3-year statute of limitations as requested by the AUC of Maryland, however the violator must be in good standing with the Authority (i.e. not in Closed/Incomplete status).
- §12-135 Civil Penalties – New enforcement language.

4. ANY PERSON THAT DOES NOT MEET THE CONDITIONS

OF THE ASSESSED PENALTY WITHIN THE PRESCRIBED TIME FRAME, SHALL BE SUBJECT TO DOUBLE THE MAXIMUM FINE FOR EACH VIOLATION.

5. A PERSON THAT VIOLATES ANY PROVISION OF PART IV OF THIS SUBTITLE IS SUBJECT TO A CIVIL PENALTY ASSESSED BY THE AUTHORITY NOT TO EXCEED[ING]\$ 2,000 FOR THE FIRST OFFENSE; AND

6. SUBJECT TO SUBSECTION (C) OF THIS SECTION, \$ 4,000 FOR EACH SUBSEQUENT OFFENSE, IF THE VIOLATION OCCURS WITHIN THREE YEARS OF THE DISCOVERY OF THE PRIOR OFFENSE; AND

(i) IF THE PRIOR VIOLATION IS UNRESOLVED WITH THE AUTHORITY, REGARDLESS OF THE AGE OF THE PRIOR VIOLATION; AND

7. ANY PERSON WHO FAILS TO APPEAR BEFORE THE AUTHORITY FOR A HEARING AFTER PROPER NOTIFICATION MAY BE SUBJECT TO A \$200 FINE IN ADDITION TO ANY CIVIL PENALTY ASSESSED BY THE AUTHORITY. New from the Authority approved 8/30/18

8. ANY PERSON THAT FILES FOR AN EMERGENCY TICKET WHICH DOES NOT MEET THE DEFINITION OF EMERGENCY, AS DEFINED IN §12-101(K) OF THIS SUBTITLE MAY BE SUBJECT TO THE MAXIMUM PENALTIES UNDER THIS SUBSECTION.

Reminders:

Potential Changes: No changes will be added to the working copy of the statute unless discussed by the committee and placed in **RED** to indicate under consideration. Once agreed upon the text will convert to **GREEN**. Any language to be removed from the statute will be bracketed in **RED** and struck through, then turned to **GREEN** once agreed upon. Notations will be shown in **PURPLE**

- Please be prepared to discuss the section changes in “red “(under consideration) at the August 30, 2018 meeting.
- The Agenda for the August 30, 2018 meeting will be sent by blast email prior to the meeting and will also be posted on the Authority website.
- Prepare for introduction of legislation for the 2019 Legislative **Session ONLY IF THE GROUP CAN WRAP THINGS UP BY THE SEPTEMBER 10, 2018 MEETING.** The bill will be cross-filed as before.

All meeting notes, lists and amendments will be put on the Authority website www.mddpa.org /click on Capitol Dome to go to the Title XII re-write page.

NOTE: WE ARE STILL GOVERNED BY THE CONSENSUS PROCESS... THEREFORE, PLEASE BE RESPECTFUL OF THE WORK THAT HAS BEEN COMPLETED AND THE PROCESS PROTOCOLS.

Next Meeting(s): All meetings are held from 9:00 a.m. to 12:00 p.m.

Monday, September 10, 2018 – CANCELLED

Wednesday, October 10, 2018

Wednesday, October 17, 2018

Thursday, November 1, 2018

Friday, November 16, 2018

Attachments: Please go to www.mddpa.org and click on the Annapolis Capitol Dome for the following: (Note: Please allow at least a week for posting!)

AUGUST 30, 2018 -- Title XII Statute mark-up, Sign-in Sheet & Meeting Notes