



## Maryland Underground Facilities Damage Prevention Authority

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

**From:** Jim Barron, MUFDPDA

**CC:**

**Date:** November 26, 2018

**Re:** November 16, 2018 Meeting Notes

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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](mailto: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.

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

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

### **Pending:**

- §12-101(s) Owner. --
  - (1) "Owner" means a person that:
    - (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~~; and
    - (ii) has the right to bury an underground facility.
  - (2) "Owner" includes: ~~BUT NOT LIMITED TO:~~
    - (i) a public utility ~~FACILITY~~;

- (ii) a telecommunications corporation;
- (iii) a cable television corporation;
- (iv) a political subdivision;
- (v) a municipal corporation;
- (vi) a steam heating company;
- (vii) an authority; ~~[and]~~
- (viii) a unit of the State.

(t) Owner-member. -- "Owner-member" means an owner that participates as a member in a one-call system.

(u) Person. --

(1) "Person" has the meaning stated in § 1-101 of this article.

(2) "Person" includes: **BUT IS NOT LIMITED TO:**

- (i) a municipal corporation;
- (ii) the State;
- (iii) a political subdivision of the State; ~~[and]~~
- (iv) any governmental unit, department, or agency.

- §12-123 (a)(1) 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;**

- §12-127 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; **No agreement has been made by stakeholders on reporting language.**

- **§12-129. ~~[Detectable wires]~~ NOTE: THIS § APPLIES ONLY TO PRIVATE PROPERTY!!**

**UTILIZING DETECTABLE OR LOCATABLE METHODS AS DEFINED IN §12-101 (j) (1) & (2) AND FURTHER DESCRIBED IN §12-103 OF THIS SUBTITLE ~~[for]~~ ON PRIVATE PROPERTY** 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.**

### **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.

- MDOT/SHA stated that it as of the grandfathering date it “will start to install tracer wire(s) and test station(s) on all newly installed [to include retrofitting and maintenance repair(s)] for locating purposes on MDOT owned storm drains.” MML & MACo have preliminarily agreed in principle to making their underground storm water systems locatable and detectable as well.
- §12-101 Primary Contractor, formally “Responsible Contractor” - definition has been approved.
- §12-101(aa) (1) "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, sanitary sewer systems, geothermal systems, conduits, cables, valves, lines, wires, manholes and attachments.

(2) Underground Facility does not include a storm drain. This was agreed to by the steering committee as a compromise in order to ensure that all underground facilities would be “locatable or detectable” after the date prescribed date in the draft legislation (October 1, 2020 or 2021)

- 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.
- § 12-107 -- 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.
- §12-111—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.
- §12-125 – 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.
- (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.
- “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.

#### New Special Sections:

SECTION 2. AND BE IT FURTHER ENACTED, that this act shall take effect on October 1, 2019

SECTION 3. AND BE IT FURTHER ENACTED, that nothing in this subtitle shall abrogate, modify, or infringe upon permitting requirements or the requirements of any permits issued by any governmental entity or agency.

#### 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 November 16, 2018 meeting.
- The Agenda for the November 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 November 30, 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](http://www.mddpa.org) /click on Capitol Dome to go to the Title XII re-write page.

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

Friday, November 30, 2018

**Attachments:** Please go to [www.mddpa.org](http://www.mddpa.org) and click on the Annapolis Capitol Dome for the following: **Pending**

November 16, 2018 -- Title XII Statute mark-up, Sign-in Sheet & Meeting Notes