



Maryland Underground Facilities Damage Prevention Authority

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

From: Jim Barron, MUFDP

CC:

Date: November 30, 2018

Re: November 30, 2018 Meeting Notes

At the [twenty-ninth](#) and final drafting meeting of the Title XII re-write, the last of the “red items” were discussed. This was the final drafting meeting for the working group.

Consensus:

- § 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 - A definition for “Mark” has been added to the definition section of the statute.

- §12-101(aa) New Definition of Underground Facility:

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)

(1) "UNDERGROUND FACILITY" MEANS ANY ITEM 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.
(Removal required for MML & MACo consent)

- (§12-101 (x)) - Trenchless Technology definition has been approved.
- **§ 12-103. Scope of subtitle** - Formally the individual homeowner exemption per PHMSA’s request; the new §12-103 addresses locatable and detectable underground facilities.

AS OF OCTOBER 01, 2020, 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.

- § 12-107 -- Membership new (g) tightens up the Authority appointment process by assigning time limits to the stakeholder nominators with regard to replacements.
- §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.
- §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.

(d)(1) (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.

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

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.

- §12-129 (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.
- New section §12-130 Approved– 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.
- 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.
- §12-131new (d) - “Call before you Clear”- has now been addressed in the reworked designer ticket section Part V, the designer ticket section has been heavily amended and is now called “Non-excavation ticket request”.
- 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 - 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.

- §12-135(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 \$2000 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.

STALEMATES:

Removal required for NAIOP and the MD Multi-Family Housing group consent. All of the "Owner" definition reverts back to the 2010 language.

- §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
 - (iv) any governmental unit, department, or agency.
 - (viii) a unit of the State.

Removal required for NAIOP and the MD Multi-Family Housing group consent. However, general consensus was that this language clarified that the individual private homeowner does not have to join the one-call system once they are no longer exempt from calling Miss Utility before they dig on their property, as a result of the change to §12-103.

~~(3) OWNER OR LESSEE OR OCCUPANT OF A SINGLE-FAMILY PROPERTY IS NOT CONSIDERED AN OWNER OF AN UNDERGROUND FACILITY AS DEFINED IN THIS SUBTITLE.~~

Removal required for NAIOP and the MD Multi-Family Housing group consent.

§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;~~

Reminders:

www.mddpa.org /click on Capitol Dome to go to the Title XII re-write page.

All twenty-nine meetings -- Title XII Statute mark-ups, Sign-in Sheets & Meeting Notes and Agenda's

Next Meeting(s): There are no meetings planned for now.

Next Steps:

- The final draft mark-up will be sent to the Authority's Counsel for review for legal sufficiency. If there are any substantive changes to the mark-up the working group will be notified via email.
- The approved final mark-up will be sent to Legislative Services with a request for bill drafting.
- The preliminary draft bill will be returned for review. If there are now issues, the draft will be put in its final format and will be ready for introduction, once the lead sponsors have signed on. Once bill House & Senate bill numbers have been assigned, the progress of the bills can be followed on-line through legislative services <http://dls.maryland.gov/> or www.mddpa.org
- Below is the schematic of the legislative process.