



**Fourth Report to the  
Governor and the General Assembly  
Of Maryland**

**MARYLAND UNDERGROUND FACILITIES  
DAMAGE PREVENTION AUTHORITY**

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**January 2015**



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**Maryland Underground Facilities  
Damage Prevention Authority**

7223 Parkway Drive, Suite 210

Hanover, MD 21076

(410) 782-2102

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*Chair*

Marcia Collins  
*Vice Chair*

Bernard W. Cochran  
*Treasurer*

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January 2015

To The Governor of Maryland

and

To the General Assembly of Maryland

Pursuant to the Public Utilities Article of the Annotated Code of Maryland, Section 12-114 Annual Reports, I hereby, as the 2014 Chair of the Maryland Underground Facilities Damage Prevention Authority submit this Fourth Report to the Governor and the General Assembly of Maryland for Calendar Year 2014 on the Activities of the Authority during the Calendar Year 2014.

Sincerely,

Kevin Woolbright,  
Chair





## **ORIGIN AND BACKGROUND OF AUTHORITY**

In the fall of 2006 two meetings were called by the Maryland Public Service Commission on October 25, 2006 and November 29, 2006 to all stakeholders involved with or affected by the State's Underground Facilities Law to discuss the status of the application and enforcement of the law, and, in particular, its compliance with the Federal Pipeline Safety Act legislation then pending before the United States Congress.

Several hundred people attended these two meetings, all stakeholders of the State Underground Facilities Law such as contractors, utility companies, locators, one call miss utility system, county and local government officials and developers.

As a result of discussions at these two meetings, it was decided to create a stakeholders steering committee work group tasked with the following goals, that is, to review the current State underground facilities "Miss Utility Law" (1) to make substantive and non substantive revisions in light of current practices and experience since the last enactment of the law in May 1990; (2) to bring Maryland's law in harmony and compliance with the 9 damage prevention program elements and provisions of the then pending Federal Pipeline Safety Act legislation which subsequently has become a federal law; and (3) to review and incorporate as appropriate the best practice recommendations of the Common Ground Alliance.



The members of the stakeholders group which was established were:

Chairman James Barron – Ronkin Construction – Contractor Representative

Scott Brown – Washington Gas Light – Gas Representative

John Clementson- Maryland Public Service Commission– Regulator Representative

Wayne Gilmer – Utiliquest – Locator Representative

Tom Hastings – One Call Concepts Locating Service – Locator Representative

Vince Healy (replaces Nelson Sneed) – Verizon – Telephone Representative

Brian Holmes – Maryland Transportation, Builders and Materials Association – Contractor Representative  
(resigned August 2009)

Gary Kaufman (replaced John Eichhorn) – Comcast – CATV Representative

Matt Ruddo – One Call Concepts, Inc. – Call Center Representative

Nelson Smith – Maryland State Highway Administration – State Highway Representative

Tom Baldwin (replaced Pete Parr) – Baltimore Gas & Electric  
Representative

Kevin Woolbright – Washington Suburban Sanitary Commission –  
Water/Sewer Representative

Artie Bell III – Burgemeister Bell, Inc. – Contractor Representative

Zenon Sushko- Maryland Public Service Commission – Regulator  
Representative

Bruce C. Bereano – Associated Utility Contractors of Maryland  
Representative

Mark Hamrick – Verizon – Telephone Representative

The stakeholders group commenced its regular meetings on June 20, 2007 and conducted more than 65 working sessions meetings – each approximately three to four hours, to discuss and propose revisions to the current statute.

The key goals of the steering group have been:

- Establish practices that meet the 2006 PIPES Act 9 key elements of an effective damage prevention program.
- Establish a sensible law that meets the needs of the excavating community while protecting all facilities.

- Include stronger enforcement to prevent unsafe practices utilizing the very effective Damage Prevention Committee created privately by the stakeholders over twenty (20) years ago where all parties are welcome at the monthly meetings to discuss safe practices and resolve issues. The expectations are that proposed changes to the law will strengthen the present damage prevention goals.
- Create a sensible Locate ticket scope to include response time by facility owners, life of a ticket with a clear explanation of when a ticket expires while meeting the needs of the excavating community and allowing facility owners a reasonable amount of time to mark their facilities.

The final product of the stakeholders group was presented to the Maryland General Assembly in the 2010 legislative session as Senate Bill 911, and House Bill 1290. Senate Bill 911 was enacted by the legislature and the Maryland Underground Facilities Damage Prevention Authority was created, and Maryland's underground facility damage prevention law, more commonly known as the Miss Utility Law, was updated.

Unlike the history of other state statutes, when Maryland's underground facilities law was enacted originally, over 20 years ago, it was left to the private sector and not government regulators nor any government agency to implement and apply the statute. Generally speaking, this approach has worked very well over the years with all of the various stakeholders communicating and working well together with mutual respect and trust and commitment to the goal of public safety through training and education and compliance with the statute. The stakeholders established, over 20 years ago, the MD/DC Miss Utility Damage Prevention Committee which meets monthly to address and



resolve the day-to-day practical issues and problems that occur with the statute.

In addition, the stakeholders who are owners of underground facilities also established over 20 years ago a MD/DC Miss Utility Subscribers Committee which meets regularly to work on public education and outreach programs, damage prevention programs, and advertisements concerning knowledge of and compliance with the law for the purposes of public safety and avoidance of interruption of services.

Accordingly, it is with this unique background and history of the development and implementation of the Maryland Underground Facilities Law that compliance with the 9 elements of the Federal Pipeline Safety Act was addressed and met in the revisions and changes proposed while keeping Maryland's existing approach, structure and operation of the law.

The new Law went into effect on October 1, 2010. Although created by the legislature, MDUFDPA is a stakeholder-run organization that has the ability to enforce the Miss Utility Law in the form of mandatory training or fines for violators.

All nine members of this Authority are appointed by the Governor to serve staggered two-year terms. They do not receive any compensation or any reimbursement for expenses. The makeup of this Authority is as follows:

- Two underground facility owners that are Maryland members of the Maryland/DC subscribers committee;

- One from the Associated Utility Contractors of Maryland;

- One from the Public Works Contractors Association of Maryland;

- One from the One-Call Centers operating in the State;

One that represents the underground utility locator community selected by the Maryland members of the Maryland/DC Damage Prevention Committee;

One from the Maryland Association of Counties with experience in the field of underground utilities;

One from the Maryland Municipal League with experience in the field of underground facilities;

One person from the general public selected by the appointed and qualified members of the Authority.

On February 25, 2011, the Authority was fully appointed and composed and commenced deliberations and operation. Its first annual report to the Governor and the General Assembly was filed in January 2012. The Authority accomplished the important organizational work of electing officers, adopting an official seal, crafting by-laws and a Code of Conduct and mission statement, creating a website ([www.mddpa.org](http://www.mddpa.org)), publicizing meeting dates, and taking advantage of opportunities for educating the public about the importance of marking underground facilities before digging and the role of the Authority in enforcing the State law. The Authority also created a damage prevention brochure which was printed to use for distribution.

The Authority was successful in getting seed funding from the Maryland Damage Prevention Committee, the Utilities Service Protection Center of Delmarva, Inc. (USPCD), and Baltimore Gas and Electric. Because the Authority is prohibited by law from receiving appropriations from the State budget, a grant request was filed with the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration for \$100,000.00. Authorized by the Governor, the purpose of the grant request is to establish an office and professional staff, manage the



website and public outreach, and record process and track all probable violation cases. Funding the Authority and encouraging the filing of probable violations were two of the important issues that were carried forward into the second year of the Authority.

The Authority was successful in being awarded \$95,000.00 by the Federal Government, \$47,500.00 of which has been received by the Authority in November of 2012 to commence the goals and objectives of the grant. The balance \$47,500.00 was received by the Authority in April of 2013 upon federal procedure verification of use and expenditure of the first half of the grant money.

Additionally, in January 2014 the Authority again submitted a request for the U. S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration's (PHMSA) State Damage Prevention Grant in the amount of \$100,000.00. The request was submitted to secure funds to continue the now successful and growing operational expenses of the Authority in receiving and researching Notices of Probable Violations.

In September 2014, the Authority received notification from PHMSA that its application for the 2014 State Damage Prevention Grant had been accepted in the amount requested of \$100,000.00. The 2014 State Damage Prevention Grant Year runs from September 22, 2014 to September 21, 2015. The Authority received it's first 50%, \$50,000.00 distribution on October 29, 2014.





## **AUTHORITY MISSION STATEMENT**

Pursuant to the legislative intent enacted by the Maryland General Assembly, as part of the State Underground Facilities law, Article Public Utilities, Title 12, Section 12-102, the mission statement adopted by the Authority is as follows:

### **MISSION STATEMENT**

The Authority seeks to protect underground facilities of owners in the State of Maryland from destruction, damage or dislocation to prevent:

- death or injury to individuals;
- property damage to private and public property; and
- the loss of services provided to the general public.

To accomplish this, the Authority seeks to promote, enhance, and assist the State of Maryland in enforcing the Maryland underground utility damage prevention law and furthering programs through efforts that include consistent enforcement, effective public education, and the constant knowledge that public safety through reduced damages is our prime concern.

# MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY MEMBERS AND STAFF

<u>MEMBER</u>	<u>REPRESENTING</u>	<u>ORGANIZATION</u>
Kevin Woolbright, Chair	Underground Facility Owners	WSSC
Marcia Collins, Vice Chair	Maryland Association of Counties	Baltimore City DPW
Bernard W. Cochran, Treasurer*	Maryland Municipal League	City of New Carrollton DPW
Thomas C. Baldwin*	Underground Facility Owners	BGE
Arthur Bell**	Associated Utility Contractors of Maryland	Burgemeister-Bell Inc.
Veronica Davila-Steele	General Public	Take Two Hair & Skin Salon and Double Take Hair Studio
Walter F. Gainer	Public Works Contractors Association	W. F. Wilson & Sons, Inc.
Thomas L. Hastings	Underground Utility Locators	One Call Concepts Locating Services. Inc.
R. Thomas Hoff, Sr.*	One Call Centers	One Call Concepts, Inc.

## STAFF

Bruce C. Bereano, Secretary	Office of Bruce C. Bereano
James A. Barron, Executive Director	Barron Consulting Services, LLC

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\* Appointment ended September 30, 2014 but remains seated until a replacement is appointed by the Governor.

\*\* Can serve one more term.



## **SUMMARY OF AUTHORITY ACTIVITIES AND ACTIONS**

### **During Calendar Year 2014**

Since January 1, 2014, the Authority, which is fully appointed by the Governor and therefore operational, has conducted the following activities and actions:

The Authority has held 11 publically announced meetings at the Miss Utility One Call Center, Conference Room, Suite 104 Hanover, Maryland 21076. All meeting dates were announced and posted in the General Assembly Notice of Meetings document and on the Authority website.

At the January 8, 2014 meeting, the Authority elected the following new officers: Kevin Woolbright as Chair, Marcia Collins as Vice-Chair and Bernard W. Cochran as Treasurer.

The Authority was awarded the \$100,000 2014 State Damage Prevention Grant from the Pipeline and Hazardous Materials Safety Administration (PHMSA) and received the first 50%, \$50,000 distribution of the award in October of 2014. The second 50%, \$50,000 distribution of the award is expected in April of 2015. The 2014 Grant Year runs from September 22, 2014 to September 21, 2015.

James A. Barron by contract with Barron Consulting Services, LLC continued as the Authority's Executive Director. Barron was the chairman of the Stakeholder Group that drafted the revised Title 12 Legislation adopted by the Legislature in the 2010 Legislative Session.



A retired excavator, Barron was a founding member of the Authority when it was initially authorized in 2011.

Article VIII of the Authority By-laws required by law for the conduct of its business was revised to establish a procedure when a vacancy occurs. A copy of the revised by-laws is Appendix A of this Report.

The Authority adopted as required by law a Code of Conduct for its members, copy of which is Appendix B of this Report.

The Authority's PowerPoint presentation was revised and enhanced, posted on the website, and used to explain the role and activities of the Authority as well as the accomplishments of the Authority in 2014. The Power Point was presented at the Delmarva Damage Prevention and Training Seminar on September 4, 2014 and at the Greater Chesapeake Damage Prevention Training Conference on October 30, 2014. Additionally, the presentation was presented as a case study to the Common Ground Alliance (CGA) Stakeholder's Advocacy working Subcommittee at their meeting in Las Vegas on November 12, 2014. The presentation is also scheduled to be presented to a working stakeholder group in California that is in the process of drafting Damage Prevention Legislation in that state. They are interested in mirroring the Maryland Model of the Enforcement Authority. Outreach continued with several Authority members attending the MML and MACo Summer Conferences as well as the Greater Chesapeake Damage Prevention Training Conference in October. New Authority brochures were developed and distributed at the various conferences and at other educational opportunities. For the first time, the Authority had its own booth at the Greater Chesapeake Damage Prevention Training Conference and plans on continuing with that booth at multiple conferences throughout 2015.

Links to the Authority's website are established on the One Call Concept, Miss Utility and the USPCD's websites. In addition, members

were encouraged to recommend links that could be placed on the Authority's website to other relevant organizations and conferences.

The Authority received forty-seven (47) Notices of Probable Violation (NPV's) in 2013.

- Of those forty-seven (47), eight (8) were closed in 2013.
  - Six (6) for insufficient evidence,
  - One (1) with fines totaling \$2,000.00 and Damage Prevention Training completed, and
  - One (1) where the complainant withdrew the complaint.
- Of those forty-seven (47), seven (7) were appealed to the Circuit Court of Anne Arundel County. Those will be discussed later on pages 15, 16 & 17 of this report.
- The remaining thirty-two (32) were carried over into 2014 and acted upon as noted below:
  - Three (3) were closed in 2014 for insufficient evidence,
  - One (1) was closed in 2014 because the Authority determined there was no violation of the statute,
  - Sixteen (16) were closed in 2014 with fines totaling \$21,500 and Damage Prevention Training completed,
  - Seven (7) remain open into 2015 with fines paid totaling \$21,500 and Damage Prevention Training yet to be completed, and
  - Five (5) remain open into 2015 for action;
    - One (1) had a hearing scheduled on 11/5/14 but was postponed to 2/4/15 and
    - Four (4) where the Authority has been unable to make contact with the Probable Violator. Those four (4) will either:
      - Have the Probable Violator subpoenaed to a hearing or



- The Authority will issue a decision and place the fines in collection.

The Authority received an additional fifty (50) Notices of Probable Violation (NPV's) in 2014. One of those NPV's contained nineteen (19) separate violations bringing the 2014 total of NPV's to sixty-eight (68). Those sixty-eight (68) Notices of Probable Violations are currently in the statuses noted below:

Of those sixty-eight (68), ten (10) were closed in 2014.

- One (1) for insufficient evidence
  - Five (5) with fines totaling \$21,500.00 and Damage Prevention Training completed,
  - One (1) where the complainant withdrew the complaint
  - Two (2) because the Authority determined there was no violation of the statute, and
  - One (1) because the Probable Violator went out of business.
- The remaining fifty-eight (58) that were filed in 2014 were acted upon as noted below:
    - Six (6) remain open into 2015 with fines paid totaling \$14,000 and Damage Prevention Training yet to be completed,
    - One (1) with a \$1,500 fine that has not yet been paid nor has Damage Prevention Training been scheduled,
    - One (1) had a hearing scheduled on 11/5/14 but was postponed to 2/4/15
    - Five (5) have recommendation letters sent recommending a total of \$14,000 in fines where hearings have been requested on 2/4/15,
    - Five (5) have recommendation letters sent recommending a total of \$11,000 in fines and no response has yet been received from the Probable Violator,



- Twenty-seven (27) have been thoroughly researched and will be presented to the Authority for review and action at their 1/7/15 meeting,
- Six (6) are currently in research, and
- Seven (7) are new and are awaiting a response from the Probable Violator to the Authority's "Notice of Investigation" letter.

As noted in the second bullet on page 13, seven (7) decisions of the Authority were appealed to the Circuit Court of Anne Arundel County.

- One (1) NPV involved a contractor that was excavating without a valid active Miss Utility Ticket. Clear Evidence was present at the location in the form of a gas meter located at a residence approximate fifty (50) feet from the location of the incident where an underground gas service was damaged during excavation.

The Authority at their September 11, 2013 meeting, held a hearing on this NPV. A decision was made by the Authority that:

- The contractor did not have a valid active Miss Utility Ticket which is a violation of Section 12-124 (a) of the statute and the Authority assessed a \$2,000 fine for this violation, and
- There was clear evidence of existing underground gas facilities at the excavation site which is a violation of Section 12-127 (e) of the statute and assessed a \$2,000 for this violation.
- This is a total of \$4,000 in fines, however, the Authority discounted the total by \$1,000 upon completion of Damage Prevention Training netting a total \$3,000 fine.

The Probable Violator appealed the Authority's decision to the Circuit Court of Anne Arundel County. Oral Arguments were held in front of the Circuit Court on April 7, 2014 where the Probable Violator's attorney argued the Constitutionality of the Authority.

A written decision in favor of the Authority was issued by the Circuit Court on June 9, 2014. A copy of the 21 page written decision is attached in Appendix G. The Probable Violator appealed the decision of the Circuit Court to the Maryland Court of Special Appeals on June 16, 2014. The Authority is currently waiting for a scheduled date when oral arguments will be held in front of the Maryland Court of Special Appeals.

- The remaining six (6) NPV's involved a utility locating contractor working under contract with a facility owner to mark the owner's underground facilities. Allegedly, the Probable Violation violated section 12-126 (a) (c) of the statute by not marking the underground facilities in a timely manner as outlined in the statute.

The Authority at their July 10, 2013 meeting, held a hearing on these NPV's. Decisions were made by the Authority on each NPV individually as noted below:

- The first two NPV's had recommended fines of \$2,000 for each alleged violation. After hearing testimony from the Probable Violator on each of the NPV's, the Authority felt there were extenuating circumstances in each NPV and , therefore reduced the fine on each NPV from \$2,000 to \$1,000 each;
- The third NPV had testimony about very unusual circumstances that did not allow the marking company to mark the facility owner's underground facilities per statute. After hearing the testimony on that NPV, the Authority decided to drop all fines and proposed training for that alleged violation;
- The Probable Violation admitted, under oath, that they were guilty of the last two NPV's. The Authority took this into consideration and reduced the fine on each of those NPV's from \$2,000 to \$500; and



- Damage Prevention Training was required for the Probable Violator on all of these NPV's cumulatively.

The Probable Violator appealed the Authority's decision to the Circuit Court of Anne Arundel County. After several postponements, Oral Arguments were held in front of the Circuit Court on October 27, 2014 where the Probable Violator's attorney argued that a potential conflict of interest existed with several of the Authority members. Those potential conflicts allegedly reduced the number of Authority members that could vote for or against a decision on these six (6) NPV's to a level that placed the Authority voting in the absence of a quorum. A simple one page decision affirming the action of the Authority at their July 10, 2013 hearing was issued by the Circuit Court on November 7, 2014. A copy of that 1 page written decision is attached in Appendix G. The Probable Violator appealed the decision of the Circuit Court to the Maryland Court of Special Appeals on December 4, 2014. The Authority is currently waiting for a scheduled date where oral arguments will be held in front of the Maryland Court of Special Appeals on these six (6) NPV's.

When Notices of Probable Violation are filed on the Authority Website, the person filing the complaint can identify one or multiple probable violations of the Annotated Code of Maryland, Public Utilities, Title 12. Of the one hundred fifteen (115) Notices of Probable Violation filed with the Authority to date, one hundred sixty-four (164) specific probable violations of Title 12 have been alleged. Those probable violations breakdown into the following categories identified in the statute and in the numbers associated with each probable violation filed.

- Section §12-121 – Emergency excavation or demolition -
  - Twenty-two (22) probable violations filed.
    - One (1) Closed – no violation of the law exists.
    - One (1) Closed – fine paid and training completed.



- Twenty (20) Open – in investigation phase.
- Section §12-124 (a) – Notice to one-call system -
  - Fifty-seven (57) probable violations filed for a first time no call,
    - Nineteen (19) Closed – fine paid, training completed
    - Two (2) Closed – Withdrawn by complainant
    - Three (3) Closed – Insufficient evidence
    - One (1) Closed – Probable violator out of business
    - Six (6) Open – Fine paid, training not yet completed
    - Six (6) Open – Under subpoena or in collections
    - One (1) Open – Appealed
    - One (1) Open – Fine not paid & training not completed
    - Two (2) Open – Recommendation letters sent, no response
    - Four (4) Open – Going to hearing
    - Twelve (12) Open – New, in research
  - Four (4) probable violations filed for a second time no call,
    - Three (3) Open – Fine paid, training not yet complete
    - One (1) Open – New, in research
  - Two (2) probable violations filed for a third time no call,
    - One (1) Open – Fine paid, training not yet complete
    - One (1) Open – New, in research
  - One (1) probable violation filed for a fourth time no call,
    - One (1) Open – Fine paid, training not yet complete
- Section §12-126 (a) (c) – Marking requirements –
  - Five (5) probable violations filed for no-marks at all,
    - Four (4) Closed – Insufficient evidence
    - One (1) Open – New, in research
  - Three (3) probable violations filed for mis-marks
    - Two (2) Closed – Insufficient evidence
    - One (1) Open – New, in research
  - Eleven (11) probable violations filed for late marks.
    - One (1) Closed – Insufficient evidence

- Six (6) Open – Appealed
- Four (4) Open – Going to hearing
- Section §12-127 – Excavation after notice that facilities marked or not in vicinity –
  - (a) – One (1) probable violation filed for not waiting till the ticket has been cleared,
    - One (1) Open, New in research
  - (b) – One (1) probable violation filed for maintenance of the marks,
    - One (1) Closed – Insufficient evidence
  - (c) - Fourteen (14) probable violations filed under duty of excavators,
    - Three (3) Closed - Fine paid, training completed
    - One (1) Closed - insufficient evidence
    - One (1) Open - Under subpoena or in collections
    - Three (3) Open - Going to hearing
    - Five (5) Open - New, in research
  - (e) – Forty-three (43) probable violations filed under clear evidence
    - One (1) Closed, Insufficient evidence
    - Fourteen (14) Closed - Find paid, training completed
    - One (1) Open – Appealed
    - Seven (7) Open – Find paid, training not yet completed
    - Four (4) Open – Under subpoena or in collections
    - Three (3) Open – Recommendation letter sent, no response
    - Three (3) Open – Going to hearing
    - Ten (10) Open – New, in research

Of the One Hundred Fifteen (115) Probable Violations submitted to the Authority which include One Hundred Sixty-four (164) individual probable violations of Title 12, upon review and action of the Authority to date:



- \$143,500.00 in fines plus training have been recommended by the Authority after initial review,
- \$100,000.00 of those fines have either (1) gone to hearing or (2) been accepted by the probable violators prior to a hearing,
- After a formal hearing or by acceptance of the recommendation of the Authority by the probable violator, \$75,000.00 in fines have been formally levied against the probable violators and
- \$68,500.00 of those fines have been paid today.
- All fines levied by the Authority have included a requirement of Damage Prevention Training for the Probable Violator and their employees.

The Authority website continued to be improved in content, in its ease of use and updated on a continual basis.

The Authority established a \$250 filing fee for filing a complaint. The filing fee is to help cover the costs of the Authority to process and hear an incident and is a non-refundable fee. With the Authority now ready to hear reported incidents, the members voted to suspend the filing fee for 2013 to encourage potential complainants to file incidents they believe are violations of the law and deserving of action of the Authority. That suspension of the \$250 filing fee extended into 2014 when the Authority re-instated the filing fee at \$200.00 effective June 1, 2014 which remained in place for the remainder of 2014.

In 2013, it came to the Authority's attention that some Maryland Municipal and County underground facility owners had yet to become members of the Miss Utility System. The Authority voted to send letters to these utility owners to explain their responsibilities under State law. In November of 2013, letters were sent to ninety-two (92) Municipalities and 4 Counties within Maryland. This is an ongoing effort remained active throughout 2014. To date, all Maryland Counties are members of Miss Utility except two of those counties are not marking all of their underground facilities upon receipt of a Miss Utility Notification of a



planned excavation or demolition. The Authority will continue to work with these counties to bring them into compliance with Title 12 in 2015 and may well have to bring Notices of Probable Violations against those counties if they do not comply. Of the ninety-two (92) municipalities that received letters from the Authority in 2013, thirty (30) have reported they do not own or operate underground facilities within their jurisdiction and, therefore, are not required to become members of the One Call System. Twenty-one (21) of those municipalities have signed up with the One Call System and are now receiving notices of planned excavations and demolitions within their jurisdiction. Two (2) of those municipalities are currently in review of the proposed service agreement and should be signed up and operation in 2015. Seven (7) of those municipalities currently have signed service agreements, are completing their databases with the One Call System and should be operational in 2015. Of the remaining thirty-seven (37), twenty-nine (29) municipalities have not responded to the Authority letters sent and eight (8) have responded, received information on the requirements of Title 12 and joining the One Call System but have not gotten back to the Authority after their initial contact. These thirty-seven (37) municipalities will be receiving certified mail in 2015 to complete a review of Title 12 with the Authority and, if they do own or operate underground facilities, initiate action to become operational with the One Call System.

The Authority received notification on November 24, 2014 from the US Department of Transportation, Pipeline and Hazardous Materials Administration (PHMSA) that the 2015 State Damage Prevention (SDP) Program Grant was advertised on the PHMSA Website with a total funding of \$1,500,000 and an award ceiling of \$100,000. This is the same grant program in which the Authority applied for and received the 2014 SDP Grant noted on page 11. The Authority will again be submitting an application for this grant which is due on January 26, 2015.

The Authority, in conjunction and participation with the MD/DC



Damage Prevention Committee and the Maryland Subscriber's committee conducted numerous education and damage prevention training sessions concerning the Miss Utility Statute and attended and participated in a number of trade shows and public events to promote damage prevention and safe excavation. A list of these training sessions and events is included as Appendix C of this Report. Specifically, twenty-three (23) Home, Garden and Trade Shows were attended. Additionally, Damage Prevention Training Sessions were provided to thirty-six (36) companies on-site that had ten (10) or more participants to train. In those thirty-six (36) sessions, One Thousand Eight Hundred Eight (1,808) participants were trained. And, four (4) quarterly training sessions were conducted at the One Call Center for companies that had less than ten (10) participants to train. Those four (4) quarterly training sessions included fifty-one (51) separate companies and one hundred twenty-three (123) individual participants.

As the Authority continued with hearings on NPV's in 2014, it continued to operate under the guidelines of Maryland Administrative Procedure Act (APA). The attorneys conducted additional training sessions with Authority members highlighting the applicable requirements of the APA while the Authority was in the hearing process. A copy of those highlighted requirements are included in Appendix E of this report.

Additionally, the Authority continued to identify certain policies and procedures that should guide the activity of the Authority. Those specific documents include an official invoice for fines levied by the Authority, a collection procedure, accounting procedures, an NPV procedure and a formal subpoena to be used by the Authority. Those documents are also included in Appendix E of this report.



## **FUTURE ACTIONS AND IMPLEMENTATION BY AUTHORITY**

The Authority will continue to meet publically in 2015 and will continue with its education and outreach efforts. However, because of an anticipated increase in NPV submissions, the Authority has altered its 2015 meeting schedule to accommodate that increase. A copy of the 2015 projected meeting schedule is included in Appendix E of this report.

In the fifth year of its existence, the Authority will be focusing on the following:

- The Executive Director will continue to assist the Authority members to, among other things, foster public understanding and awareness of the importance of underground damage prevention and the responsibilities of the public to call for utility marking before excavating; evaluate and process online filing of incidents that require Authority attention and track all such incidents and any necessary follow up actions; seek out and oversee efforts to acquire additional grant support for the work of the Authority; and assist with the day to day business aspects of the Authority.
- Encourage potential complainants to use the services of the Authority to address violations of the State underground facilities



law. Evaluate the implications of continuing with the filing fee. Continue an aggressive outreach effort to stimulate interest in the work of the Authority and its ability to successfully address and correct violations and lack of training that leads to violations.

- Develop a fining matrix in an attempt to construct a more objective method of evaluating fines and develop a matrix of violations tracking their current status and ultimate outcome.
- With the anticipated increase in Notices of Probable Violations (NPV's) being filed, the Authority is looking at developing a more efficient method of dealing with NPV's by creating a pre-hearing settlement process that does not infringe on a probable violator's due process but allows a probable violator to review and accept a settlement offer in lieu of going to a formal hearing in front of the Authority.
- Washington Gas and several other stakeholders approached the Authority with a proposal to draft legislation to begin a process in Maryland of addressing the National Cross-Bore Issue. That is the potential of the directional drilling construction process intercepting or damaging existing underground gas infrastructure thus exposing that infrastructure to leakage of natural gas to a potential ignition source ultimately resulting in a possible explosion. A copy of the proposed legislation is attached to Appendix H of this report.



## **CONCLUSION**

The Authority respectfully and sincerely believes that a great deal has been accomplished by the members of the Authority in complying with the requirements of the law and getting the Authority up and operating. The Authority has made every effort to focus on and expand public awareness and compliance with damage prevention and safe excavation. The Authority has commenced its complaint process and procedure and will conduct its operation in a fair and practical fashion always bearing in mind the purpose of the Authority and intent of the law.

Each of the Authority members appointed by the Governor continues to serve in a very dedicated, professional and committed fashion to accomplish the goals of damage prevention and public education.

The Authority hopes that the Governor and the Maryland General Assembly will use it as a resource of professional knowledge and practical experience concerning any pending policy or legislative matter within the scope of the Authority's role.





# **APPENDIX A**

## **Authority Revised Bylaws**

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# By-Laws

## Authority Bylaws Pursuant To The Public Utility Companies Article §12-110 (a).

Revised and Voted on

### ARTICLE I – NAME

This Authority shall be known as the "**Maryland Underground Facilities Damage Prevention Authority**" (the "Authority").

### ARTICLE II – PURPOSE

The purpose of the Authority is to perform certain duties. Such duties may include, but are not limited to, the review of reports of probable violations of the **Maryland Underground Facilities Damage Prevention** ("Law"), making recommendations and determinations relative to such reports, making recommendations and implementing programs with regard to **Public Education and Awareness Programs** that further public safety by the reduction of damage to underground facilities, to monitor, analyze, influence, propose, support or oppose programs or regulations that directly affect damage to underground facilities serving the citizens of the State of Maryland and to make recommendations to the Governor and the General Assembly on activities of the Authority and the State damage prevention law.

### ARTICLE III – COMMITTEE MEMBERSHIP

The Maryland Underground Damage Prevention Authority shall consist of nine (9) voting members representing the following entities:

- **Two** underground facility owners that are Maryland members of the Maryland/DC Subscribers Committee;
- **One** from the Associated Utility Contractors of Maryland;
- **One** from the Public Works Contractors Association of Maryland;
- **One** from the One-Call Centers operating in the State;
- **One** that represents the underground utility locator community selected by the Maryland members of the Maryland/DC Damage Prevention Committee;
- **One** from the Maryland Association of Counties with experience in the field of underground utilities;
- **One** from the Maryland Municipal League with experience in the field of underground utilities;



- **One** person from the general public selected by the appointed and qualified members of the Authority.

The members are appointed by the Governor of the State of Maryland in accordance with Maryland law. The Authority shall be empowered to establish one or more subcommittees to assist in performing its tasks.

## Qualification To Serve

Membership on the Authority shall be through appointment by the Governor as provided under the Maryland Underground Facilities Damage Prevention Law.

## Term of Appointment

An appointed member shall serve a term of two years and if in good standing may, on recommendation, be re-appointed for an additional two year term. Request for appointment shall be made in the month of July to be effective with the first regular meeting of the Authority subsequent to October 1, of any given year.

## Officers

The members shall elect from their ranks a **Chairperson**, a **Vice Chairperson**, a **Treasurer**, and a **Secretary**. These officers shall be elected at the Authority's first regular meeting of the year and serve for a term of one year. Each officer shall be elected by a majority vote of the members of the Authority. The Chairperson position will be voted upon first. Following the election of the Chairperson, the Vice Chairperson position will be voted upon next. Following the election of the Vice Chairperson, the Treasurer position shall be voted upon and then Secretary.

When no candidate receives a majority of the votes, the candidate who receives the most votes shall be elected to the position. When there is a tie in the most votes received by two or more candidates for a position, the members shall take another vote, and only those candidates who were tied for the most votes shall be included in that ballot. This shall continue until one person has received the most votes or a tie continues to exist. If a tie continues to exist, the previous term's Chairperson shall choose the person, from the candidates who are still tied with the most votes, to hold that position for the next one-year term.

The Chairperson shall preside at all meetings except that in his/her absence the Vice Chairperson shall preside. The Secretary shall be responsible to keep a record of the actions of the Authority. Minutes of the meeting shall be taken and approved by the majority vote of the subsequent meeting. No other officers and Directors shall be appointed, except that the Chairperson or Vice Chairperson may from time to time appoint members to head subcommittees.

## ARTICLE VII – REMOVAL

Any member may resign.

On the recommendation of the Authority, a member may be removed by the Governor for incompetence or misconduct.

## ARTICLE VIII – VACANCIES

Any vacancy of either an officer of the Authority or a member of the Authority shall be filled as soon as practical.

When a vacancy occurs as to an officer of the Authority, the Authority, by secret ballot, unless decided otherwise, shall elect the officer to the Authority to fill the vacancy for that term by majority of vote of the members of the Authority.

When a vacancy occurs as to a member of the Authority, the procedure to the extent possible shall be as follows:

1. The member leaving the Authority prior to the expiration of his/her term shall promptly and directly notify the chair of the Authority.
2. Except as to the public member of the Authority, the Authority shall promptly and directly notify the entity from which the vacating member was representing of the vacancy, and request such entity to promptly notify the Governor of the vacancy and submit to the

Governor a name or names to fill and serve the balance of the term of the vacating number.

3. If a vacancy occurs in the position of public member representative of the Authority, the Chair of the Authority, as promptly as practical at a meeting of the Authority or otherwise, shall submit to the Governor for appointment a list voted upon and approved by a majority of the other appointed and qualified Authority members.

4. Unless and until the Governor appoints and fills a vacancy of any member of the Authority, that member, unless he/she resigns from the Authority, shall continue to serve and be a member of the Authority until the successor is appointed and qualifies.

## ARTICLE IX – COMPENSATION

Members shall serve without compensation and without reimbursement for expenses. Nothing contained in this section shall be construed to prevent any sponsoring organization from compensating their representative on the Authority for salary, expenses, or other compensation considered as a condition of their employment.

## ARTICLE X – MEETINGS

Regular meetings shall be held at least every 3 months, or monthly, or as needed, at a time and place selected by majority vote of members. Unless suspended by the Chairperson, the regular meetings will be held on the first Wednesday of each month unless that day is a State or Federal holiday. In such cases, the meeting shall be the next regular workday or a day agreed upon by the majority. If a scheduled meeting is cancelled due to weather or other reasons, the meeting may be rescheduled or combined with the next regularly scheduled meeting. Meetings shall be open, however, those attending that are not members or have not been called, shall be allowed to speak only at the discretion of the Chairperson. All meetings shall follow Robert's Rules of Order. Any regular meeting may be conducted telephonically (conference call) at the discretion of the Authority.

## ARTICLE XI – SPECIAL MEETINGS

The Chairperson may call special meetings. Such notice shall be as far in advance as practical, but not less than three days. Such meetings may be held at a time and place established by the notice. Special meetings may be by conference call or by other appropriate telecommunications means approved for the occasion. A quorum of 5 members is required for a special meeting.

## ARTICLE XII – ATTENDANCE

A roll call shall be taken by the Secretary at the beginning of each meeting and a record of those members in attendance shall be kept as part of the records of the actions of the Authority. To remain in good standing a member must attend 75 percent of all meetings conducted in a calendar year.

## ARTICLE XIII – AMENDMENTS

These bylaws may be amended by a two-thirds (2/3) majority vote of the members present at any regular meeting, if such amendment is first read and approved by a two-thirds (2/3) vote of the members present at the prior regular meeting of the Authority.

## ARTICLE XIV – QUORUM

At any meeting of the Authority, five (5) members present, in person or telephonically, shall constitute a quorum for the transaction of business. Actions by a quorum shall be deemed to represent the actions of the entire Authority.

## ARTICLE XV – ACTIONS AND POWERS

Enforcement action relative to the reports of probable violations shall be undertaken by roll call to vote of those present. A simple majority



vote of those voting shall be deemed to be the position of the Authority. Members who cannot attend meetings shall not be allowed to send an alternate representative. When an enforcement action that directly involves the employer of an Authority member, that member shall have the right to speak on the issue before the Authority and the Authority shall consider the views of the member; however, the member will abstain from voting. Such abstention shall be reported in the roll call vote. Each member shall vote in person. No person shall vote by proxy or allow his/her vote to be cast by another.

The Authority may vote on and adopt policies to be used as guidelines during its review and recommendation process relative to reports of probable violations. Such policies may serve as guidelines, but do not represent a general order, rule or regulation of the State of Maryland.

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## **APPENDIX B**

# **Authority Code of Conduct**



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# Code of Conduct

## I. Application of Policy

This policy adopted pursuant to the requirements of the Public Utility Companies Article §12-110(b). It is applicable to Authority members and is intended to supplement, but not replace, federal and state laws governing conflicts of interest applicable to nonprofit corporations. Persons covered under this policy, as well as their spouse or dependent children, are hereinafter referred to as "interested parties."

## II. Conflict of Interest

A conflict of interest may exist when the interests or concerns of an interested party may be seen as competing with the interests or concerns of the Maryland Underground Facilities Damage Prevention Authority (the "Authority"). There are a variety of situations that raise conflict of interest concerns including, but not limited to, the following:

**A. Financial Interests** – A conflict may exist where an interested party directly or indirectly benefits or profits as a result of a decision, policy or transaction made by the Authority. Examples include situations where:

- The Authority contracts to purchase or lease goods, services, or properties from an interested party.
- The Authority offers employment to an interested party, other than a person who is already employed by the Authority.
- An interested party is provided with a gift, gratuity, or favor of a substantial nature from a person or entity that does business or seeks to do business with the Authority.
- An interested party is gratuitously provided use of the facilities, property, or services of the Authority.
- The Authority adopts a policy that financially benefits an interested party.

A financial interest is not necessarily a conflict of interest. A financial conflict of interest exists only when the Authority decides a person with a financial interest has a conflict of interest.

**B. Other Interests** – A conflict also may exist where an interested party obtains a non-financial benefit or advantage that he/she would not have obtained absent his/her relationship with the Authority. Examples include where:

An interested party seeks to obtain preferential treatment by the Authority or recognition for himself/herself or another interested party.

- An interested party seeks to make use of confidential information obtained from the Authority for his/her own benefit (not necessarily financial) or for the benefit of another interested party.
- An interested party seeks to take advantage of an opportunity or enables another interested person or other organization to take advantage of an opportunity that he/she has reason to believe would be of interest to the Authority.



- The Authority adopts a policy that provides a significant nonfinancial benefit to an interested party.

A conflict of interest exists only when the Authority members decide there is a conflict.

### III. Disclosure of Potential Conflicts of Interest

An interested party is under a continuing obligation to disclose any potential conflict of interest as soon as it is known or reasonably should be known.

An interested party shall complete the State Ethics Commission financial disclosure form annually by the 30th of April for the preceding calendar year to comply with State Law.

The Secretary of the Authority of Directors shall file copies of all disclosure statements with the official corporate records of the Authority and the State of Maryland.

### IV. Procedures for Review of Potential Conflicts

Whenever there is reason to believe that a potential conflict of interest exists between the Authority and an Authority member, the Authority shall determine the appropriate response. This shall include, but not necessarily be limited to, invoking the procedures described below with respect to a specific proposed action, policy or transaction. The Chair of the Authority has a responsibility to bring a potential conflict of interest to the attention of the Authority promptly for action at the next regular meeting of the Authority or during a special meeting called specifically to review the potential conflict of interest.

Where the potential conflict involves an employee of the Authority the Chair shall be responsible for reviewing the matter and may take appropriate action as necessary to protect the interests of the Authority. The Chair shall report to the full Authority membership the results of any review and the action taken. The Chair shall determine whether any further Authority review or action is required.

### V. Procedures for Addressing Conflicts of Interest

Where a potential conflict exists between the interests of the Authority and an interested party with respect to a specific proposed action, policy or transaction, the members shall consider the matter during a meeting of the Authority. The Authority shall refrain from acting until such time as the proposed action, policy or transaction has been approved by the disinterested members of the Authority. The following procedures shall apply:

An interested party who has a potential conflict of interest with respect to a proposed action, policy or transaction of the corporation shall not participate in any way in, or be present during, the deliberations and decision-making vote of the Authority with respect to such action, policy or transaction. However, the interested party shall have an opportunity to provide factual information about the proposed conflict and/or action, policy or transaction. Also, the Authority may request that the interested party be available to answer questions.

- The disinterested members of the Authority may approve the proposed action, policy or transaction upon finding that it is in the best interests of the Authority. The Authority shall consider whether the terms of the proposed action, transaction or policy are fair and reasonable to the Authority and whether it would be possible, with reasonable effort, to find a more advantageous arrangement with a party or entity that is not an interested party.
- Approval by the disinterested members of the Authority shall be by vote of a majority of members in attendance at a meeting at which a quorum is present. An interested party shall not be counted for purposes of determining whether a quorum is present, nor for purposes of determining what constitutes a majority vote of Authority members in attendance.
- The minutes of the meeting shall reflect that the conflict disclosure was made to the Authority, the vote taken and, where applicable, the abstention from voting and participation by the interested party. Whenever possible, the minutes should frame the decision of the Authority in such a way that it provides guidance for consideration of future conflict of interest situations.

### VI. Violations of Conflict of Interest Policy

If the Authority has reason to believe that an interested party has failed to disclose a potential conflict of interest, it shall inform the person of the basis for such belief and allow the person an opportunity to explain the alleged failure to disclose.



If the Authority decides that the interested party has in fact failed to disclose a possible conflict of interest, the Authority shall take such disciplinary and corrective action as the Authority shall determine.



## **APPENDIX C**

# **Outreach and Education For 2014**



**Maryland Underground Facilities Damage Prevention Authority**  
**Maryland/DC Damage Prevention Committee**  
**Miss Utility**  
**2014 Home, Garden and Trade Shows**

**NUCA of DC Suppliers Showcase**

Busboys and Poets  
Hyattsville, MD 20781  
Jan. 16, 2014  
Approximate number of attendees: 100

**Maryland Home and Garden Show (Spring)**

Maryland State Fairgrounds  
Timonium, MD  
March 1 – 2 & 7 – 9, 2014  
Approximate number of attendees: 60,000

**Division of Labor and Industry Employment Rights & Safety Forum**

Towson University  
Towson, MD  
March 19, 2014  
Approximate number of attendees: 300

**Maryland Plumbing-Heating-Cooling Contractors Trade Show**

Howard County Fairgrounds  
West Friendship, MD  
March 19, 2014  
Approximate number of attendees:

**Allegany County All Things Home Expo**

Allegany County Fairgrounds  
Cumberland, MD  
March 21-23, 2014  
Approximate number of attendees: 700

**Home Builders Association of Washington County**

Hagerstown Community College's Athletic Recreational Community Center (ARCC)  
Hagerstown, MD  
March 22-23, 2014  
Approximate number of attendees: 900

**Washington Capitals Game**

Verizon Center  
Washington, D.C.  
April 13, 2014  
Approximate number of stadium attendees: 18,000

**Mid-Atlantic Construction Safety Conference**

The Show Place Arena and Prince Georges Equestrian Center  
Upper Marlboro, MD  
May 8, 2014  
Approximate number of attendees: 250

**NUCA of DC Safety Meeting**

Anchor Construction  
Landover, MD  
May 14, 2014  
Approximate number of attendees: 25

**NIH Research Facilities Safety Stand Down Day**

National Institutes of Health  
Bethesda, MD  
May 21, 2014  
Approximate number of attendees: 700

**DDOT Annual Public Space Week Community Day**

4th St, SW  
Washington, D.C.  
May 31, 2014  
Approximate number of attendees: 100

**Maryland/Virginia Homebuilders Association Pro Awards**

Smokey Glen Farm  
Gaithersburg, MD  
June 3, 2014  
Approximate number of attendees: 200

**Home of the Brave Benefit****Car, Truck, Motorcycle & Tractor Show**

Rommel Harley Davidson Delmarva  
Seaford, DE  
June 7, 2014  
Approximate number of attendees: 125

**Maryland Municipal League (MML) Annual Convention**

Roland Powell Convention Center  
Ocean City, MD  
June 8 – 11, 2014  
Approximate number of attendees: 1,190

**The Stone Store DIY Day**

The Stone Store  
Hanover, MD  
June 21, 2014  
Approximate number of attendees: 250



**811 Bike & BBQ Party**

Laurel, MD

July 12, 2014

Approximate number of attendees: 25

**38th Tawes Crab and Clam Bake Event**

Crisfield, MD

July 16, 2014

Approximate number of attendees: 600

**PHMSA 811 at USDOT (Nationals game to follow)**

USDOT – M Street

Washington, D.C.

Aug. 7, 2014

Approximate number of attendees: 300

**Maryland Association of Counties (MACO) Summer Conference**

Roland Powell Convention Center

Ocean City, MD

Aug. 13 – 16, 2014

Approximate number of attendees: 1,934

**NIH Safety, Health & Wellness Day**

National Institutes of Health

Bethesda, MD

Aug. 27, 2014

Approximate number of attendees: 600

**Chesapeake Region Safety Council Conference & Expo**

Johns Hopkins Applied Physics Laboratory

Laurel, MD

Oct. 1, 2014

Approximate number of attendees: 300

**Level Volunteer Fire Company Fire & Injury Prevention Open House**

Level Volunteer Fire Company

Havre de Grace, MD 21078

Oct. 5, 2014

Approximate number of attendees: 800

**Maryland Home and Garden Show (Fall)**

Maryland State Fairgrounds

Timonium, MD

Oct. 17 – 19, 2014

Approximate number of attendees: 20,000

**Maryland Underground Facilities Damage Prevention Authority**  
**Maryland/DC Damage Prevention Committee**  
**Miss Utility**  
**2014 Damage Prevention Training and Safety Presentations**

**Midasco, LLC**

7121 Dorsey Run Road  
Elkridge, MD 21075  
January 7, 2014  
20 Attendees

**ARAMARK – Mount St. Mary's**

16300 Old Emmitsburg Road  
Emmitsburg, MD 21727  
January 10, 2014  
14 Attendees

**Pleasants Construction, Inc.**

24024 Frederick Road  
Clarksburg, MD 20871  
January 24, 2014  
80 Attendees

**Concrete General**

8000 Beechcraft Avenue  
Gaithersburg, MD 20879  
February 4, 2014  
31 Attendees

**C&M Contractors**

Attended the 2/4/14 Concrete General Training noted above

**Concrete General**

8000 Beechcraft Avenue  
Gaithersburg, MD 20879  
February 11, 2014  
31 Attendees

**Harris & Sons Home Improvement**

Attended the 2/11/14 Concrete General Training noted above

**Gray and Son, Inc.**

Timonium Fairgrounds  
Fasig Tipton Building  
Timonium, MD 21093  
February 20, 2014  
120 Attendees



**Highway & Safety Services**

18960 Woodfield Road  
Gaithersburg, MD 20879  
February 21, 2014  
112 Attendees

**Gray and Son, Inc.**

Timonium Fairgrounds  
Fasig Tipton Building  
Timonium, MD 21093  
February 25, 2014  
125 Attendees

**Belfast Valley Contractors**

3809 Edgewater Place  
Baltimore, MD 21222  
February 27, 2014  
30 Attendees

**JHU Applied Physics Laboratory**

11100 Johns Hopkins Road  
Laurel, MD 20723  
March 6, 2014  
40 Attendees

**\*\* Quarterly Damage Prevention Training**

Miss Utility Call Center  
7223 Parkway Drive  
Hanover, MD 21076  
March 27, 2014  
20 Companies  
24 Attendees

**KCI Technologies, Utility Services**

936 Ridgebrook road  
Sparks, MD 21152  
March 28, 2014  
20 Attendees

**Willbros-T&D Services Lineal**

10939 Philadelphia Road  
White Marsh, MD 21162  
April 4, 2014  
198 Attendees

**Maryland Jockey Club**

Pimlico Race Track  
5201 Park Heights Avenue  
Baltimore, MD 21215  
April 15, 2014  
20 Attendees

**Anne Arundel County Southern District Roads**

350 W. Central Avenue  
Davidsonville, MD 21035  
April 16, 2014  
27 Attendees

**Cecil County Technical School**

900 North East Road  
North East, MD 21901  
April 30, 2014  
100 Attendees

**Skanska Facchina Construction**

1301 M Street, SE  
Washington, DC 20003  
May 5, 2014  
60 Attendees

**Garrett County Roads Department**

375 Francis Sanders Drive  
Oakland, MD 21550  
May 15, 2014  
40 Attendees

**Short Course 65<sup>th</sup> Water & Waste Water**

Washington College  
300 Washington Avenue  
Chestertown, MD 21620  
June 3, 2014  
60 Attendees

**B Frank Joy**

5355 Kilmer Place  
Hyattsville, MD 20781  
June 10, 2014  
12 Attendees

**\*\* Quarterly Damage Prevention Training**

Miss Utility Call Center  
7223 Parkway Drive  
Hanover, MD 21076  
June 26, 2014  
16 Companies  
33 Attendees

**Childs Landscape Contractors**

Sandy Point State Park  
Annapolis, MD 21401  
July 25, 2014  
65 Attendees



**Cherry Hill Construction**

8211 Washington Blvd.

Jessup, MD 20794

July 29, 2014

23 Attendees

**Cossentino Contracting Company, Inc.**

8505 Contractors Road

Baltimore, MD 21237

July 31, 2014

11 Attendees

**Skanska-Jay Dee, DC Water**

2036 First Street NW

Washington, DC 20009

August 20, 2104

20 Attendees

**Dynamic Concepts, Inc.**

3458 Bladensburg Road

Brentwood, MD 20722

August 28, 2014

20 Attendees

**USPCD – Training Event**

Hampton Inn

Salisbury, MD 21801

September 4, 2014

80 Attendees

**Cossentino Contracting Company, Inc.**

8505 Contractors Road

Baltimore, MD 21237

September 16, 2014

35 Attendees

**\*\* Quarterly Damage Prevention Training**

Miss Utility Call Center

7223 Parkway Drive

Hanover, MD 21076

September 25, 2014

14 Companies

35 Attendees

**Paradigm Training**

Cumberland Ramada

100 S. George Street

Cumberland, MD 21502

September 30, 2014

68 Attendees

**Paradigm Training**

Frederick Holiday Inn  
5400 Holiday Drive  
Frederick, MD 21703  
October 1, 2014  
70 Attendees

**Paradigm Training**

Columbia Holiday Inn  
7900 Washington Blvd.  
Columbia, MD 20794  
October 2, 2014  
31 Attendees

**Paradigm Training**

Middleton Hall  
4045 Renner Road  
Waldorf, MD 20602  
October 7, 2014  
35 Attendees

**Paradigm Training**

Camelot by Martin's  
13905 Central Avenue  
Upper Marlboro, MD 20774  
October 8, 2014  
50 Attendees

**Paradigm Training**

Aberdeen Holiday Inn Express  
1007 Beards Hill Road  
Aberdeen, MD 21001  
October 9, 2014  
100 Attendees

**Montgomery County School Maintenance**

Bethesda Maintenance Depot  
10901 Westlake Drive  
Rockville, MD 20852  
November 6, 2014  
30 Attendees

**\*\* Quarterly Damage Prevention Training**

Miss Utility Call Center  
7223 Parkway Drive  
Hanover, MD 21076  
November 13, 2014  
9 Companies  
31 Attendees



**Montgomery County School Maintenance**

Randolf Depot

1801 Old Randolph Road

Silver Spring, MD 20902

December 5, 2014

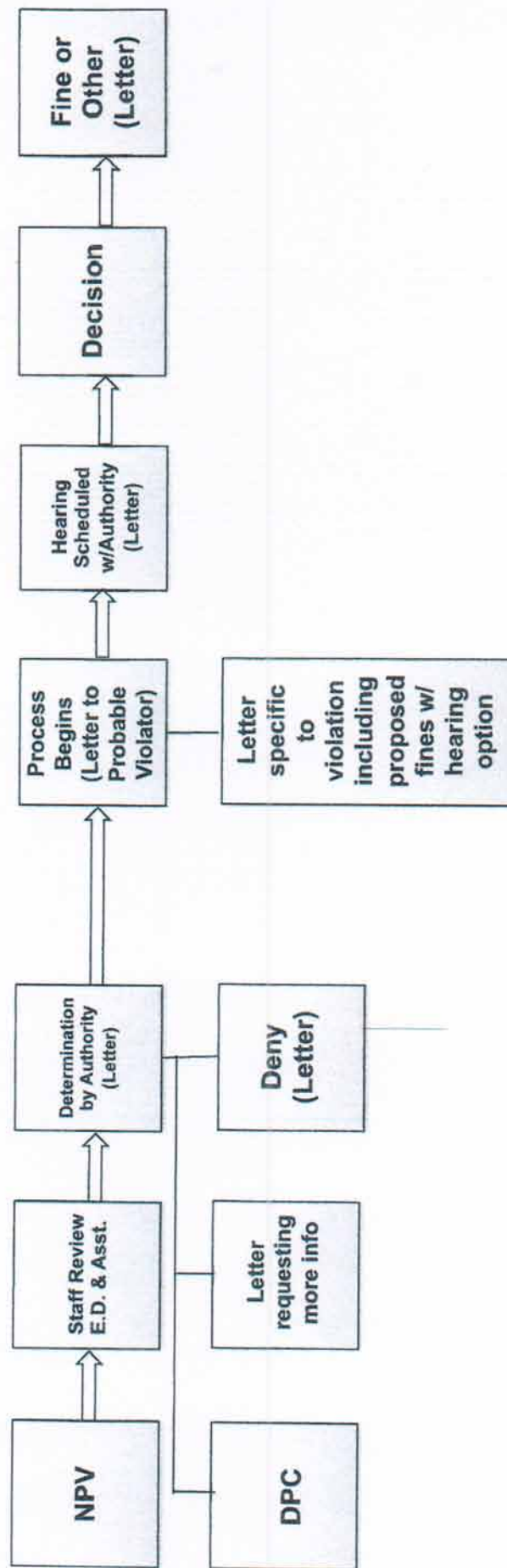
30 Attendees



## **APPENDIX D**

# **Notice of Probable Violation Process and Summary & Breakdown of 2014 NPV's**

## NOTICE OF PROBABLE VIOLATION PROCESS





NPV	Date Submitted	Fine Recommended	Violation	Training Recommended	Hearing Decision			Fine Paid	Comments	Date Closed
					Fine	Status	Net fine	Training	Status	
1	233 1/15/13	\$ -	Marks destroyed	N/A	\$ -	N/A	\$ -	N/A	Closed. Insufficient evidence	5/1/13
2	241 1/17/13	\$ -	Clear Evidence	N/A	\$ -	N/A	\$ -	N/A	Closed. Insufficient evidence	3/6/13
3	282 2/12/13	\$ 500	No Call	Yes	\$ 500	\$500 Waived	\$ -	Yes	Closed. Fine paid, training completed.	4/2/14
4	283 2/12/13	\$ 3,000	Clear Evidence	Yes	\$ 3,000	Appealed	\$ 3,000	Yes	Appealed on Constitutionality	Open
5	284 2/12/13	\$ 2,000	No Call	Yes	\$ 2,000	\$1,000 Waived	\$ 1,000	Yes	Closed. Fine paid, training completed.	2/12/14
6	285 2/12/13	\$ 4,000	Clear Evidence	Yes	\$ 4,000	\$1,000 Waived	\$ 3,000	Yes	Open. Fine Paid. Training not yet completed	Open
7	292 2/13/13	\$ 3,000	Clear Evidence	Yes	\$ 2,000	\$1,000 Waived	\$ 1,000	Yes	Closed. Fine paid, training completed.	4/2/14
8	303 2/19/13	\$ 3,000	Clear Evidence	Yes	\$ 3,000	\$1,000 Waived	\$ 2,000	Yes	Closed. Fine paid, training completed	10/16/13
9	308 2/20/13	\$ -	Mismark	N/A	\$ -	N/A	\$ -	N/A	Closed. Insufficient evidence	10/16/13
10	316a 2/25/13	\$ 2,000	Late Marking	Yes	\$ 2,000	\$1,000 Waived	\$ 1,000	Yes	Appealed on merits of case	Open
11	316b 2/25/13	\$ 2,000	Late Marking	Yes	\$ 2,000	\$1,000 Waived	\$ 1,000	Yes	Appealed on merits of case	Open
12	326 2/27/13	\$ -	No Ticket	N/A	\$ -	N/A	\$ -	N/A	Closed. Withdrawn by Complainant	4/3/13
13	408 4/2/13	\$ 2,000	Late Marking	N/A	\$ -	Appealed	\$ -	N/A	Appealed on merits of case	Open
14	411a 4/3/13	\$ 2,000	Late Marking	Yes	\$ 2,000	\$1,500 Waived	\$ 500	Yes	Appealed on merits of case	Open
15	411b 4/3/13	\$ 2,000	Late Marking	Yes	\$ 2,000	\$1,500 Waived	\$ 500	Yes	Appealed on merits of case	Open
16	411c 4/3/13	\$ -	Late Marking	N/A	\$ -	Appealed	\$ -	N/A	Appealed on merits of case	Open
17	446 4/14/13	\$ -	No Mark	N/A	\$ -	N/A	\$ -	N/A	Closed. Insufficient evidence	7/10/13
18	545 5/10/13	\$ -	No Mark	N/A	\$ -	N/A	\$ -	N/A	Closed. Insufficient evidence	7/10/13
19	575 5/15/13	\$ -	No Call	N/A	\$ -	N/A	\$ -	N/A	Closed. Insufficient evidence	10/16/13
20	576 5/24/13	\$ 3,000	Clear Evidence	Yes	\$ 3,000	\$3,000 Waived	\$ -	Yes	Closed. Fine paid, training completed.	4/2/14
21	577 5/24/13	\$ 2,000	No Call	Yes	\$ 2,000	\$1,000 Waived	\$ 1,000	Yes	Closed. Fine paid, training completed.	4/2/14
22	578 5/29/13	\$ 2,000	No Call	Yes	\$ 2,000	Agreed	\$ 2,000	Yes	Closed. Fine paid, training completed.	4/2/14
23	579 5/29/13	\$ 2,000	Duties of Excavator	Yes	\$ 2,000	Agreed	\$ 2,000	Yes	Closed. Fine paid, training completed.	7/2/14
24	675 6/5/13	\$ 1,000	Clear Evidence	Yes	\$ 500	\$500 Waived	\$ -	Yes	Closed. Fine paid, training completed.	7/2/14
25	892 7/17/13	\$ 2,000	Clear Evidence	Yes	\$ 2,000	\$0 Waived	\$ 2,000	Yes	Closed. Fine paid, training completed.	4/2/14
26	1005 8/6/13	\$ 2,000	Clear Evidence	Yes	\$ -	\$0 Waived	\$ -	Yes	Open - Pursuing a subpoena	Open
27	1089 9/4/13	\$ 2,000	Clear Evidence	Yes	\$ 2,000	\$0 Waived	\$ 2,000	Yes	Closed. Fine paid, training completed.	11/17/14
28	1188 10/7/13	\$ -	No Call	N/A	\$ -	N/A	\$ -	N/A	Closed. Insufficient evidence	2/12/14
29	1196 10/10/13	\$ 2,000	Clear Evidence	Yes	\$ 2,000	Agreed	\$ 2,000	Yes	Closed. Fine paid, training completed.	2/12/14
30	1198 10/10/13	\$ 2,000	Duties of Excavator	Yes	\$1,000	\$500 Waived	\$ 500	Yes	Closed. Fine paid, training completed.	4/2/14
31	1199 10/10/13	\$ 2,000	Clear Evidence	Yes	\$2,000	\$500 Waived	\$ 1,500	Yes	Open - Pursuing a subpoena	Open
32	1216 10/14/13	\$ 2,000	Late Marking	Yes	\$ -	N/A	\$ -	N/A	Open. Hearing scheduled 11/5/2014 - Postponed	Open
33	1249 10/23/13	\$ -	Duty of Excavator	N/A	\$ -	N/A	\$ -	N/A	Closed. Insufficient evidence	2/12/14
34	1304 11/4/13	\$ 4,000	No Call, 2nd	Yes	\$ 4,000	\$0 Waived	\$ 4,000	Yes	Open. Fine Paid. Training not yet completed	Open
35	1310 11/5/13	\$ 4,000	No Call, 3rd	Yes	\$ 4,000	\$0 Waived	\$ 4,000	Yes	Open. Fine Paid. Training not yet completed	Open
36	1311 11/5/13	\$ 4,000	No Call, 4th	Yes	\$ 4,000	\$0 Waived	\$ 4,000	Yes	Open. Fine Paid. Training not yet completed	Open
37	1318 11/6/13	\$ 2,000	No Call	Yes	\$ 2,000	\$1,500 Waived	\$ 500	Yes	Open. Fine Paid. Training not yet completed	Open
38	1319 11/6/13	\$ 2,000	Clear Evidence	Yes	\$ 2,000	Never went to hearing	\$ 2,000	Yes	Closed. Fine paid, training completed.	4/2/14

39	1320	11/6/13	\$ 3,000	No Call Clear Evidence	Yes	\$ 3,000	Never went to hearing	\$ 3,000	Yes	Completed	\$ 3,000	Closed. Fine paid, training completed.	7/2/14
40	1322	11/6/13	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	\$0 Waived	\$ 2,000	Yes	Open	\$ 2,000	Open. Fine Paid. Training not yet completed	Open
41	1323	11/6/13	\$ 4,000	No Call, 2nd Clear Evidence	Yes	\$ 4,000	\$0 Waived	\$ 4,000	Yes	Open	\$ 4,000	Open. Fine Paid. Training not yet completed	Open
42	1336	11/8/13	\$ -	No Call Clear Evidence	N/A	\$ -	\$0 Waived	\$ -	N/A	N/A	\$ -	Closed. Insufficient evidence	2/12/14
43	1413	11/27/13	\$ -	Abuse Emergency Call No Call	N/A	\$ -	N/A	\$ -	N/A	N/A	\$ -	Closed. Authority determined there was no violation of law	4/2/14
44	1446	12/5/13	\$ 2,000	Duties of Excavator Clear Evidence	Yes							Open - Pursuing a subpoena	Open
45	1449	12/5/13	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	\$1,500 Waived	\$ 500	Yes	Open	\$ 500	Closed. Fine paid, training completed.	9/3/14
46	1483	12/11/13	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	Never went to hearing	\$ 2,000	Yes	Open	\$ 2,000	Closed. Fine paid, training completed.	10/8/14
47	1497	12/16/13	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	Never went to hearing	\$ 2,000	Yes	Open	\$ 2,000	Open - Pursuing a subpoena	Open
48	1589	1/17/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	\$0 Waived	\$ 2,000	Yes	Open	\$ 2,000	Open. Fine Paid. Training not yet completed	Open
49	1599	1/21/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	\$0 Waived	\$ 2,000	Yes	Open	\$ 2,000	Open. Fine Paid. Training not yet completed	Open
50	1677	2/20/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	\$1,000 Waived	\$ 1,000	Yes	Open	\$ 1,000	Open. Partial fine paid and training not completed.	Open
51	1723	3/3/14	\$ 4,000	No Call, 2nd Clear Evidence	Yes	\$ 4,000	\$0 Waived	\$ 4,000	Yes	Open	\$ 4,000	Open. Fine Paid. Training not yet completed	Open
52	1724	3/3/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	\$500 Waived	\$ 1,500	Yes	Open	\$ -	Open. Fine not paid and training not yet completed	Open
53	1765	3/13/14	\$ -	Abuse Emergency Call No Call								Open. 19 separate violations. In research.	Open
54	1799	3/26/14	\$ 6,000	Duties of Excavator Abuse Emergency Call	Yes	\$6,000	\$2,000 Waived	\$ 4,000	Yes	Completed	\$ 4,000	Closed. Fine paid, training completed.	9/2/14
55	1832	4/2/14	\$ -	Late Marking Clear Evidence	Yes							Closed. Authority determined there was no violation of law	6/6/14
56	1834	4/2/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 2,000	Yes	Open	\$ 2,000	Open. Hearing scheduled 11/5/2014 - Postponed	Open
57	1838	4/2/14	\$ -	No Call Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 2,000	Yes	Open	\$ 2,000	Closed. Authority determined there was no violation of law	5/7/14
58	1841	4/3/14	\$ 2,000	Late Marking Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 2,000	Yes	Open	\$ 2,000	Open. Recommendation letter sent 9/15/14 & 12/13/14	Open
59	1853	4/4/14	\$ 2,000	Late Marking Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 2,000	Yes	Open	\$ 2,000	Hearing scheduled 11/5/2014 - Postponed	Open
60	1864	4/9/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 2,000	Yes	Open	\$ 2,000	Open. Fine not paid, training not yet completed.	Open
61	1869	4/9/14	\$ -	No Call Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 2,000	Yes	Open	\$ 2,000	Closed. Withdrawn by Complainant	5/7/14
62	1870	4/9/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 2,000	Yes	Open	\$ 2,000	Closed. Fine paid, training completed.	9/2/14
63	1871	4/9/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 500	Yes	Open	\$ 500	Closed. Probable Violator "Out of Business"	12/16/14
64	1872	4/9/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	\$1,500 Waived	\$ 500	Yes	Open	\$ 500	Closed. Fine paid, training completed.	9/2/14
65	1873	4/9/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 2,000	Yes	Open	\$ 2,000	Closed. Fine paid, training completed.	11/16/14
66	1874	4/18/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 2,000	Yes	Open	\$ 2,000	Open. Recommendation letter sent 8/18/14. Hearing requested	Open
67	1954	5/1/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 2,000	Yes	Open	\$ 2,000	Closed. Fine paid, training completed.	9/2/14
68	1955	5/1/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 2,000	Yes	Open	\$ 2,000	Open. Recommendation letter sent 8/18/14 & 10/6/14	Open
69	1993	5/12/14	\$ -	Mis-Mark Clear Evidence	Yes	\$ 4,000	Never went to a hearing	\$ 4,000	Yes	Open	\$ 4,000	Closed. Insufficient Evidence.	12/16/14
70	2130	6/17/14	\$ 4,000	No Call Clear Evidence	Yes	\$ 4,000	Never went to a hearing	\$ 4,000	Yes	Open	\$ 4,000	Open. Fine Paid. Training not yet completed	Open
71	2292	7/31/14	\$ 3,000	No Call Clear Evidence	Yes	\$ 3,000	Never went to a hearing	\$ 3,000	Yes	Open	\$ 3,000	Recommendation letter sent 9/15/14. No response yet.	Open
72	2446	9/2/14	\$ 4,000	No Test Pit Clear Evidence	Yes	\$ 4,000	Never went to a hearing	\$ 4,000	Yes	Open	\$ 4,000	Recommendation letter sent 10/16/14. Hearing requested.	Open
73	2447	9/2/14	\$ 4,000	No Test Pit EQ within 18"	Yes	\$ 4,000	Never went to a hearing	\$ 4,000	Yes	Open	\$ 4,000	Recommendation letter sent 10/16/14. Hearing requested.	Open
74	2450	9/2/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 2,000	Yes	Open	\$ 2,000	Recommendation letter sent 10/16/14. No response yet.	Open
75	2459	9/2/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 2,000	Yes	Open	\$ 2,000	Recommendation letter sent 10/16/14. Hearing requested.	Open
76	2460	9/2/14	\$ 2,000	No Call Clear Evidence	Yes	\$ 2,000	Never went to a hearing	\$ 2,000	Yes	Open	\$ 2,000	Recommendation letter sent 10/16/14 & 12/3/14.	Open

77	2504	9/15/14	New	MisMark	In Research
78	2514	9/17/14	New	UnMarked	In Research
				No Call	
79	2520	9/19/14	New	Clear Evidence	In Research
80	2521	9/19/14	New	Ticket Not Cleared	In Research
				No Call	
81	2522	9/19/14	New	Clear Evidence	In Research
				Duties of Excavator	
82	2523	9/19/14	New	Clear Evidence	In Research
83	2524	9/19/14	New	No Call	In Research
84	2547	9/25/14	New	Abuse Emergency Call	In Research
				No Call	
85	2737	11/17/14	New	Clear Evidence	In Research
86	2738	11/17/14	New	No Call	In Research
87	2739	11/17/14	New	No Call - 2nd Offense	In Research
88	2740	11/17/14	New	No Call - 3rd Offense	In Research
				No Call	
89	2743	11/17/14	New	Clear Evidence	In Research
				No Call	
90	2765	12/1/14	New	Clear Evidence	In Research
				No Call	
91	2890	12/16/14	New	Clear Evidence	In Research
				Due Care	
92	2891	12/16/14	New	No Test Pit	In Research
				Due Care	
				No Test Pit	
93	2895	12/17/14	New	Clear Evidence	In Research
94	2896	12/17/14	New	No Call	In Research
				No Call	
95	2897	12/17/14	New	Clear Evidence	In Research
				No Call	
96	2898	12/17/14	New	Clear Evidence	In Research
97	2921	12/22/14	New	No Call	In Research





## **APPENDIX E**

# **Policies, Procedures and Documents of the Authority**



It has been concluded by legal counsel that Maryland's Administrative Procedures Act (APA) would apply to all hearings requested by a person alleged to have violated the Underground Facilities Damage Prevention Act, Title 12 of the Public Utilities Article of the Annotated Code of Maryland .

The APA gives the Authority the option of delegating the authority to conduct hearings to the Office of Administrative Hearings (OAH) in which case an Administrative Law Judge with the OAH would conduct the hearing. As the Authority can delegate the authority to hold hearings on a case-by-case basis, should it become not cost effective for the OAH to hold the hearings, the Authority could take back the authority to hold the hearings. Whether the hearings are held by the Authority or the OAH, they must be public.

If the Authority decides to conduct the hearings itself, these are the requirements it must follow:

1. The Authority must give reasonable written notice of the hearing to all parties stating:
  - a. the date, time, place and nature of the hearing,
  - b. the right to call witnesses and submit documents,
  - c. the right to request subpoenas for witnesses and evidence specifying the costs associated with the request,
  - d. that a copy of the hearing procedure is available upon request specifying the costs associated with the request,
  - e. that failure to appear for a scheduled hearings may result in an adverse action against the party, and
  - f. that the parties may agree on the evidence and waive their right to appear at the hearing.
2. The Authority may not prohibit any party from being advised or represented at the party's expense by an attorney.
3. All testimony must be given under oath administered by the Authority Chair or any member of the Authority.
4. The proceedings of the hearing must be recorded.
5. The Authority may compel witnesses to attend by subpoena.



6. All parties may present oral and documentary evidence and cross-examine witnesses.
7. The presiding officer may admit "probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs."
8. The presiding officer may not communicate ex parte, directly or indirectly, regarding the merits of any issue in the case while it is pending with any party to the case or the party's representative.
9. Hearsay evidence (information gathered by one person from another person concerning some event, condition, or thing of which the person had no direct experience) is admissible.
10. Hearings may be conducted by telephone, video conferencing or other electronic means.
11. Findings of fact must be based exclusively on evidence in the record.
12. If any party requests a transcript and pays the costs required, the proceedings of the hearing shall be transcribed.
13. The record of the hearings must include all motions, evidence, staff memoranda, objections, and findings of fact.
14. The Authority must issue a written decision, which contains separate statements of a) the findings of fact, b) conclusions of law and c) an order. The decision must include a statement that any person aggrieved by a decision has the right to appeal the decision within 30 days of receiving the decision.
15. The decision must be issued within 90 days of the date of the hearing.
16. A copy of the decision must be delivered or mailed to each party or the party's attorney of record.

During the actual hearing, Authority members should observe the following protocols:





1. The recorder is turned on prior to each case being called and turned off immediately after testimony in the case is closed.
2. The Authority Chair calls the case specifically referencing the NPV Number, the name of the complainant and the name of the probable violator.
3. The oath is administered to whoever is presenting the case for the Authority, as well as all other individuals who will be presenting testimony during the hearing in the case..
4. When the Authority presents the case, a brief summary of what the case is about should be presented verbally and in writing for the record.
5. The individual presenting the case on behalf of the Authority should verbally identify and present each piece of documentary evidence that is part of the Authority's case. Each such document should be entered into evidence and an exhibit number identifying the exhibit should be attached to the document. Exhibit numbers should be attached in ascending order. After the exhibit number is attached, a copy of each document should be given to the party alleged to have violated the statute.

The individual presenting the defense of the party alleged to have violated the statute should verbally identify and present each piece of documentary evidence that is part of that party's case. Each such document should be entered into evidence and an exhibit number identifying the exhibit should be attached to the document. After the exhibit number is attached, a copy of each document should be given to the Authority's secretary.

6. When ever any one is presenting or if any member of the Authority asks a question, the person speaking should identify themselves for recording purposes into the record.
7. Parties presenting for the Authority and/or the party alleged to have violated the statute may cross-examine parties during the hearing.
8. The Authority has the right to subpoena witnesses to the hearing.



9. The members of the Authority should assume the position of Judge in the hearing and only ask questions specific to the NPV refraining from comments or personal experience in similar cases in their area of expertise.
10. Authority members should only ask questions specific to the NPV and the evidence provided.
11. Authority members should be attuned to react to terms like "here" or "there" as witnesses point to pictures or exhibits. "Here" or "there" do not appear on the record, so a reviewer cannot tell to what the witness intended to refer. The Chair or staff admitting evidence into the record should be prepared to state, "the witness said 'here' and pointed to, for example, the lower right quadrant of Exhibit\_\_ where a ditch appears (or other similar detailed description of what is being identified on the exhibit)." The witness could also be asked to place an X or other mark on the exhibit so the record is clear.
12. When a multi-page exhibit is being used, the Chair should be prepared to either have all pages marked or to have the individual page on which there is testimony marked as "A" or otherwise specify the page to which there is testimony if the testimony is directed at a specific page. If it is a group of e-mails, reference to date and time would be sufficient to identify the reference.
13. It is the Authority that bears the responsibility to create a clear record for the court to affirm on appeal, so attention should be given regarding how the testimony would be understood by a non-participant based on the paper record.
14. Care should be taken to listen for "uh huh" or to watch for shakes of the head. The Chair needs to make sure the witnesses are asked to clearly state yes or no so the record is clear.
15. Authority members should remain in the hearing room throughout each hearing. No cell phones or other electronic devices should be used during hearings.



*The Authority seeks to protect underground facilities in Maryland from damage or dislocation, death or injury to individuals and loss of public services.*

Invoice No.	Test Invoice
Invoice Date:	May 9, 2013
Bill To:	Mr. John Doe XYZ Contractor
Address:	123 Anywhere Drive Everywhere, USA
Phone:	(513) 272-5455
E-mail:	<a href="mailto:xyz@verizon.net">xyz@verizon.net</a>
Fax:	(513) 272-5499

Make all checks payable to the Maryland Underground Facilities Damage Prevention Education and Outreach Fund at the address above. Total due in 30 days. Overdue accounts subject to a service charge of 2% per month and attorney's fees if applicable.

All funds collected by The Authority through fines go exclusively to the Maryland Underground Ground Facilities Damage Prevention Education and Outreach Fund for the sole purpose of developing and administering public education and outreach programs and for the development of safety procedures to prevent damage to underground facilities.





**Maryland Underground Facilities  
Damage Prevention Authority**

7223 Parkway Drive, Suite 210  
Hanover, MD 21076  
410-782-2102

**Operating Practices  
of the  
Maryland Underground Facilities Damage Prevention Authority  
("The Authority")**

**Collection Procedure**

1. Within 30 days after the expiration of the 30 day time for an aggrieved person to appeal the decision of the Authority for judicial review to the Circuit Court (see Section 12-113 (e), Public Utility Article) the Authority staff shall send notice to the person who has been determined by the Authority to be in violation and assessed a civil penalty advising such person that if payment is not made to the Authority that the Authority shall turn the collection matter over either to a collection agency or an attorney at law for purposes to directly collect such assessed civil penalty.
2. If within 30 days after sending such collection notice letter to such person assessed with a civil penalty by the Authority that person does not satisfactorily respond and make payment in full or make with the Authority satisfaction arrangements for payment, the Authority staff then and in such event shall promptly turn the collection matter over either to a collection agency or an attorney at law for collection.



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**Accounting Policies and Operating Practices  
of the  
Maryland Underground Facilities Damage Prevention Authority  
("The Authority")**

**Accounting Department Organization**

The CFO of One Call Concepts, Inc. ("OCCINC") oversees all accounting functions of The Authority. Under his supervision and direction the Office Associate handles the day-to-day payment processing and has custody of and will maintain the checkbook. The CFO of One Call Concepts, Inc. and the Executive Director of The Authority are available to provide back up assistance in case of an emergency.

**Payment Processing**

This procedure involves inspecting documentary evidence in support of the request for payment. The Office Associate must determine the following:

- Approval authority is required from the CFO of OCCINC for any requests for payment over \$1,000. The Office Associate can provide approval authority for requests under the \$1,000 threshold.
- Written evidence of receipt of goods or services must be provided. This can range from a "receipt" or a "purchase order copy" with initials of an individual invoice/remittance slip and /or package slip for the item/services rendered.
- Amounts, items order, quantities and descriptions on invoices received from suppliers shall be compared to evidence of receipt and checked for mathematical accuracy.

**Cash Disbursements**

Checks can be processed upon an approved request for payment or at regular intervals determined by the CFO of OCCINC.

- The Authority Executive Director, Chairman and Treasurer are authorized to sign checks on behalf of The Authority.
- Checks under \$2,500 require one signature.



## **Maryland Underground Facilities**

### **Damage Prevention Authority**

7223 Parkway Drive, Suite 210

Hanover, MD 21076

- Checks between \$2,500 and \$5,000 require one signature plus a well-documented approval (electronic or signature) from one of the remaining approved signers.
- Checks over \$5,000 require two signatures.
- Checks can be authorized and processed direct through on-line bill paying by the CFO of OCCINC with the following authorization procedures.
  - The CFO of OCCINC must approve requests under \$2,500 by signature (or initialing) of the CFO of OCCINC prior to processing through the bank.
  - Requests over \$2,500 must be approved by the CFO of OCCINC and one of the other signatories noted above by signature (or initialing) of the CFO of OCCINC and one of the other signers noted above prior to processing through the bank.
  - As part of the on-line bill paying process, the CFO of OCCINC will print a receipt of the transaction.
- Any requests for disbursements shall be accompanied with the underlying support information and presented to the signer(s).
- The CFO of OCCINC following required approval and signature(s) as per the thresholds noted above will mail all disbursements.
- All disbursement records supporting the check shall be filed in the Authority's annual records housed with the CFO of OCCINC at 7223 Parkway Drive, Hanover, Maryland 21076.
- All disbursements will be recorded by someone other than the CFO of OCCINC and the account signatories.
- Bank statements will be sent to someone other than the CFO of OCCINC and the account signatories.
- Bank reconciliations will be made monthly by someone other than the CFO of OCCINC and the account signatories.



**Maryland Underground Facilities  
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**Operating Practices  
of the  
Maryland Underground Facilities Damage Prevention Authority  
("The Authority")**

**NPV Recommendation Procedure**

1. Upon completion of a thorough and comprehensive investigation of the Notice of Probable Violation (NPV) submitted by a complainant on the Authority Website, the Executive Director will present the entire review of the NPV along with all supporting documentation to the Authority at the next regularly scheduled meeting of the Authority.
2. After the Authority completes their review of the NPV at a regularly scheduled meeting, the Authority will either (1) assign a recommendation of civil penalty and/or training for the probable violator, (2) request additional investigative procedures to acquire more information and documentation for a further review of the NPV before making a recommendation or (3) dismiss the NPV for (a) a lack of a documented violation, (b) a lack of a documented probable violator, (c) a lack of sufficient evidence and documentation to proceed with any further investigation or (d) any reason the Authority may deem reasonable for not proceeding with any further investigation or review of the NPV.
3. If the Authority makes a recommendation of civil penalty and/or training, the Executive Director will forward a letter by regular mail to the probable violator alerting them of the (1) the establishment of the Authority and its legislative intent and authority, (2) the details of the NPV as outlined in the initial submission by the complainant, (3) the research of the Authority, (4) possible effects of subtitle §12-135, (5) the action taken by the Authority, (4) the probable violator's rights, remedies and options, and (5) the existence of Maryland's Administrative Procedure Act (APA) and how it impacts the hearing process.
4. If the probable violator does not respond to the Authority's recommendation letter within the prescribed 20 day period, the Executive Director will send a second recommendation letter by certified mail as outlined in 3 above.
5. If the probable violator still does not respond to the Authority's recommendation letter, the Executive Director will bring the issue back to the Authority at their next regularly scheduled meeting at which time the Authority will assign a hearing date for the NPV and direct the Executive Director to notify all parties to the NPV of the hearing date and, at the discretion of the Authority issue a subpoena to the probable violator and to any other party the Authority deems necessary to summons.





**Maryland Underground Facilities  
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7223 Parkway Drive, Suite 210  
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410-782-2012

**2015**

January 7, 2015	Business Meeting Only Election of Officers
February 4, 2015	Hearings Limited Business Meeting If Needed
March 4, 2015	Business Meeting Only
April 1, 2015	Hearings Limited Business Meeting If Needed
May 6, 2015	(Business Meeting Only
June 3, 2015	Hearings Limited Business Meeting If Needed
July 8, 2015	July 1 <sup>st</sup> Conflicts with MML Summer Conference Business Meeting Only
August 5, 2015	Hearings Limited Business Meeting If Needed
September 2, 2015	September 7 <sup>th</sup> is Labor Day Business Meeting Only
October 7, 2015	Hearings Limited Business Meeting If Needed
November 18, 2015	Business Meeting Only (Nov. 4 conflicts with CGA Fall Meetings and Nov. 11 is Veterans Day
December 2, 2015	No Meeting





## **APPENDIX F**

# **Proposed Legislation for the 2015 Maryland Legislative Session**

AN ACT concerning

**Underground Utility Damage Prevention – Location of Building Sewer Piping**

FOR the purpose of requiring that any person who installs certain building sewer piping after a certain date shall follow a certain manner so that the piping is locatable; and generally concerning underground utility damage prevention of building sewer piping.

BY adding to

Article – Public Utilities

Section 12-127.1

Annotated Code of Maryland

(2010 Replacement Volume and 2014 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
That the Laws of Maryland read as follows:

**Article – Public Utilities**

**12-127.1**

TRACER WIRE. BUILDING SEWER PIPING THAT DISCHARGES TO PUBLIC OR PRIVATE SYSTEMS SHALL BE LOCATABLE. AN INSULATED COPPER TRACER WIRE, 10 AWG MINIMUM IN SIZE AND SUITABLE FOR DIRECT BURIAL OR AN EQUIVALENT PRODUCT, SHALL BE UTILIZED. THE WIRE SHALL BE INSTALLED IN THE SAME TRENCH AS THE SEWER WITHIN 12 INCHES (305 MM) OF THE PIPE AND SHALL BE INSTALLED TO WITHIN FIVE FEET (1524 MM) OF THE BUILDING WALL TO THE POINT WHERE THE BUILDING SEWER INTERSECTS WITH THE PUBLIC SYSTEM OR A PRIVATE SYSTEM TO THE POINT OF DISPOSAL. AT A MINIMUM, ONE END OF THE WIRE SHALL TERMINATE ABOVE GRADE IN AN ACCESSIBLE LOCATION THAT IS RESISTANT TO PHYSICAL DAMAGE, SUCH AS WITH A CLEANOUT OR AT THE BUILDING WALL.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2015, and apply only to new or replaced building sewer piping buried or installed after the effective date.



## **APPENDIX G**

**Circuit Court of Anne  
Arundel County Decisions  
Case C-13-182390  
And  
Case 02-C-13-180990**





# **Decision**

**Case C-13-182390**

**Reliable Contracting**

**VS**

**Maryland Underground  
Facilities Damage Prevention  
Authority**

IN THE MATTER OF  
RELIABLE CONTRACTING  
COMPANY

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE MARYLAND  
UNDERGROUND FACILITIES  
DAMAGE PREVENTION  
AUTHORITY

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* ANNE ARUNDEL COUNTY  
\*  
\* Case No.: C-13-182390

\* \* \* \* \*

**MEMORANDUM OPINION**

This matter came before the Court on April 7, 2014 on Reliable Contracting Company's Petition for judicial review following an adverse decision by the Maryland Underground Facilities Damage Prevention Authority. Appearing at the April 7, 2014 hearing were James S. Liskow, Esq., on behalf of Reliable Contracting Company, Paul Finamore, Esq., on behalf of the Maryland Underground Facilities Damage Prevention Authority, and Dan Friedman, Esq., on behalf of the Office of the Attorney General of Maryland. A hearing having been held, counsel heard, and upon careful consideration of the arguments presented at the hearing and in the submitted pleadings, the Court rules as follows.

**I. Background**

On April 16, 2013, Reliable Contracting Company (hereinafter "Petitioner"), a Maryland grading corporation, received a letter from the Maryland Underground Facilities Damage Prevention Authority (hereinafter "Respondent" or "the Authority"). The letter indicated that on February 12, 2013, Washington Gas filed a Notice of Probable Violation ("NPV") with the Authority, naming Petitioner as the contractor who

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allegedly violated provisions of Title 12 ("Underground Facilities") of the Public Utilities ("P.U.") Article of the Maryland Code, specifically § 12-124(a)<sup>1</sup> and § 12-127(e).<sup>2</sup> According to Washington Gas, Petitioner violated the above-noted statutory provisions by damaging its facilities on March 26, 2012, at 4905 Earths Bounty Drive in Bowie, Maryland.

In the letter, the Authority stated that it thoroughly researched the data submitted by Washington Gas in the NPV and determined that Petitioner had violated Md. Code Ann., P.U. § 12-124(a) and § 12-127(e).<sup>3</sup> Pursuant to their statutory authority to assess civil penalties for violation of Title 12 of the Public Utilities Article, the Authority fined Petitioner two thousand dollars (\$2,000.00) for its violation of Md. Code Ann., P.U. § 12-124(a), and one thousand dollars (\$1,000.00) for its violation of Md. Code Ann., P.U. § 12-127(e).<sup>4</sup> In the letter, the Authority informed Petitioner of its right to a formal hearing, during which the Authority reviews all facts in the NPV before it takes any final action

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<sup>1</sup> Requiring an individual intending on performing excavation or demolition in the State to "initiate a ticket request by notifying the one-call system serving the geographic area where the excavation or demolition is to be performed of the person's intent to perform the excavation or demolition."

<sup>2</sup> Prohibiting an individual who "knows or has reason to know that an underground facility in the area of a planned or ongoing excavation or demolition is not marked as required" from beginning or continuing an excavation or demolition unless certain conditions are met.

<sup>3</sup> The letter stated, in pertinent part:

The [Maryland Underground Facilities Damage Prevention] Authority ... has come to the following conclusions on each probabl[e] violation:

1. No Locate: subtitle § 12-124(a) – No record was found in the Miss Utility database indicating that [Petitioner] has called the One Call System prior to their excavating on March 26, 2012 and thus no Miss Utility Ticket was active at the time and date of the damage to Washington Gas facilities.
2. Knowledge (clear evidence) of unmarked facilities: subtitle § 12-127(e) – In the Notice of Probable Violation, Washington Gas indicated an "[a]ir conditioner unit, telephone, power facilities and a gas meter were clearly visible from the damage location" indicating the clear evidence of underground facilities was present.

<sup>4</sup> MUFDPDPA indicated that the one thousand dollar (\$1,000.00) fine would be waived in lieu of Damage Prevention Training.



(i.e. fines and/or damage prevention training). On May 2, 2013, Petitioner submitted a written request for a formal hearing before the Authority.

On September 11, 2013, the Authority, pursuant to Md. Code Ann., P.U. § 12-112, held a hearing on the NPV brought against Petitioner. Present at the hearing was James Liskow, Esq. ("Liskow") on behalf of Petitioner. During the hearing, Liskow challenged the constitutionality of the Authority's enabling statute. Specifically, Liskow argued that the Authority's oversight and sanctioning authority constituted an impermissible delegation of judicial functions, and a violation of the separation of powers principle. Liskow also contended that the relevant statutory language contained no enumerated safeguards or guidance in assessing fines/penalties. Rather, the broad statutory language afforded the Authority unfettered discretion to fine an individual or entity up to two thousand dollars (\$2,000.00) for a violation. Finally, Liskow asserted that the Authority's notice of the civil penalty against Petitioner was constitutionally deficient, as it lacked basic due process.

On September 16, 2013, the Authority sent a letter to Petitioner which detailed its findings following the September 11, 2013 hearing. The letter indicated, under the heading titled "Action Taken by The Authority at the September 11, 2013 Meeting," that Petitioner violated Md. Code Ann., P.U. §§ 12-124(a) & 12-127(e). Accordingly, the Authority assessed a fine of two thousand dollars (\$2,000.00) for Petitioner's violation of § 12-124(a), and a fine of one thousand dollars (\$1,000.00) for Petitioner's violation of § 12-127(e), the latter of which Petitioner could purge if it completed a Washington Gas sponsored damage prevention training within ninety (90) days.

## II. Issues Presented

On October 7, 2013, Petitioner noted a timely Petition for Judicial Review of Decision of the Maryland Underground Facilities Damage Prevention Authority. On December 26, 2013, Petitioner submitted a Memorandum of Points & Authorities. In the Memorandum, Petitioner sets forth three (3) questions for review, which the Court has rephrased:<sup>5</sup>

- I. Does § 12-135 of Maryland Public Utilities Article of the Maryland Code violate Article 24 of the Maryland Declaration of Rights and Article IV of the Maryland Constitution in vesting plenary judiciary powers in the Maryland Underground Facilities Damage Prevention Authority ("the Authority") to adjudicate all cases involving violations of the Miss Utility Statute?
- II. Does § 12-135 of Maryland Public Utilities Article of the Maryland Code violate Article 24 of the Maryland Declaration of Rights and Article IV of the Maryland Constitution in vesting the Maryland Underground Facilities Damage Prevention Authority ("the Authority") unrestricted, unbridled discretion in fixing the amount of a penalty up to two thousand dollars (\$2,000.00) without any legislative guidance?
- III. Did the Maryland Underground Facilities Damage Prevention Authority ("the Authority") exceed its statutory authority in entering a citation providing for an additional one thousand dollars (\$1,000.00) sanction not provided by statute?

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<sup>5</sup> Petitioner presented its questions for review as follows:

- A. Does Maryland Public Utilities § 12-135 violate Art. IV of the Maryland Constitution and/or Art. 24 of the Declaration of Rights in vesting plenary judicial power in the Maryland Underground [Facilities] Damage Prevention Authority to adjudicate all cases involving violations of the Miss Utility Statute?
- B. Does Maryland Public Utilities § 12-135 violate Art. IV of the Maryland Constitution and/or Art. 24 of the Declaration of Rights in vesting the Maryland Underground [Facilities] Damage Prevention Authority unrestricted, unbridled discretion in fixing the amount of penalty, within broad limits, up to \$2,000.00, without any legislative safeguards or standards?
- C. Did the Maryland Underground [Facilities] Damage Prevention Authority exceed its statutory authority in entering a citation providing for an additional \$1,000.00 sanction not provided by statute, finding by "clear evidence" the Petitioner had "knowledge" and further violate Petitioner's due process rights in so finding when no notice of same was provided in the citation and further usurp both legislative and judicial power in inventing a penalty not provided by statute?



### III. Contentions

#### (a) Petitioner's Memorandum of Points and Authorities

On December 26, 2013, Petitioner submitted a Memorandum of Points and Authorities, wherein it addresses the questions noted above. To support its position, Petitioner contends that the Authority's power to assess penalties against individuals for violations of the Miss Utility Statute constitutes an impermissible assignment of judicial authority to an administrative agency. Petitioner argues that the Authority's broad authority over it, and other individuals, is improper as Petitioner has not submitted to the jurisdiction of the Authority which, according to Petitioner, potentially extends over any individual who in any way moves dirt in the State.

Petitioner asserts further that, assuming *arguendo* that it is permissible for the General Assembly to delegate such authority to the Authority, the penalty imposed by the agency was unconstitutional. Under the relevant statutory language, the Authority may enter a penalty against an individual for a violation of the Miss Utility statute up to two thousand dollars (\$2,000.00) for a first offense, and up to four thousand dollars (\$4,000.00) for a subsequent offense. Petitioner, relying heavily on *Cnty. Council for Montgomery Cnty. v. Investors Funding Corp.*, 270 Md. 403, 405 (1973), maintains that, in the absence of further legislative guidance, the imposition of civil penalties without legislative safeguards or standards constitutes an invalid delegation of legislative and judicial power.

Finally, Petitioner contends that the standard by which the Authority determined that Petitioner had violated the Miss Utility statute (*i.e.*, "clear evidence" that Petitioner had "knowledge" of the unmarked utilities) has no statutory basis.



### (b) Respondent's Memorandum

On January 22, 2014, Respondent submitted a Memorandum in response to Petitioner's Memorandum of Points and Authorities. As an initial matter, Respondent contends that Petitioner never disputes nor denies its violation of the Miss Utility Statute, as it previously determined. According to Respondent, even if Petitioner attempted to make such an argument, there existed substantial evidence in the record to support its findings.

As to the constitutional issues raised by Petitioner, Respondent argues that such arguments are without merit. With specific respect to Petitioner's reliance on *Cnty. Council for Montgomery Cnty. v. Investors Funding Corp.* to support the assertion that the enabling statute of the Authority constituted an impermissible delegation of authority by the General Assembly, Respondent argues that, contrary to the contentions of Petitioner, *Investors Funding Corp.* explicitly permits the delegation of quasi-judicial powers to administrative agencies. According to Respondent, such a delegation of power is constitutional as long as there is an opportunity for judicial review of an agency's decision. Respondent points out that, under the Miss Utility Statute, all decisions of the Authority are subject to judicial review by the circuit courts of Maryland. Accordingly, Respondent contends that the General Assembly's delegation of quasi-judicial authority was constitutionally permissible.

With respect to Petitioner's argument that the Authority improperly assessed a one thousand dollar (\$1,000.00) civil penalty for Petitioner's knowing violation of P.U. § 12-127(e), Respondent asserts that the imposition of the penalty was permissible. According to the Authority, the relevant statutory language permits it to issue fines up to

two thousand dollars (\$2,000.00) for first offenses. The Authority points out that it determined that Petitioner violated two (2) provisions of the Miss Utility Statute – P.U. §§ 12-124(a) and 1-127(e). Accordingly, Respondent contends that it acted within its authority to assess a one thousand dollar (\$1,000.00) fine for Petitioner's violation of P.U. § 12-127(e).

**(c) Statement of the Views of the Attorney General**

On January 22, 2014, the Attorney General of Maryland submitted a Statement on the Views of the Attorney General on the Constitutionality of the "Miss Utility" Law. Although not a named party, the Attorney General filed the Statement pursuant to his constitutional duty to defend the constitutionality of laws enacted by the General Assembly.

In the Statement, the Attorney General contends that the Miss Utility Statute is constitutional. According to the Attorney General, Petitioner's reliance on *County Council for Montgomery County v. Investors Funding Corp.*, 270 Md. 403 (1973), to attack the Authority is misplaced. The Attorney General argues that, contrary to the assertions of Petitioner, the General Assembly's delegation of authority to Respondent is valid under *Investors Funding Corp.* as the relevant statutory language permits an aggrieved party to seek judicial review of the agency's decisions.

As to Petitioner's contention that the Miss Utility statute lacks sufficient guidelines and standards in the assessment of penalties, the Attorney General argues that the statute meets constitutional muster. According to the Attorney General, rather than unbridled discretion, the Authority may impose a civil penalty only in limited number of

enumerated situations. Furthermore, the Attorney General argues that the statute's legislative intent sufficiently guides the exercise of the Authority's discretion.

**(d) Petitioner's Reply**

On February 4, 2013, in response to both Respondent's Memorandum and the Statement of the Attorney General, Petitioner submitted a Reply brief. In the Reply, Petitioner asserts that Respondent's limited authority and the availability of judicial review under the State Government Article of the Maryland Code does not change the Authority's true nature; an unconstitutional court. According to Petitioner, the Authority is not an administrative body as it does not administer anything. Rather, Respondent exerts its authority over individuals, with whom it has no prior connection, through the issuance and mailing of a citation. Petitioner argues that under the Miss Utility Statute, the extent of the Authority's power is not limited to professional excavators, but impermissibly extends to any individual intending to perform an excavation or demolition in the State.

With respect to the Authority's issuance of civil penalties, Petitioner contends that the Attorney General's reliance on the availability of judicial review is misplaced. According to Petitioner, the Miss Utility Statute contains no standards to guide the Authority in its issuance of civil citations, and the availability of judicial review of the Authority's decisions does not cure this deficiency. Furthermore, Petitioner points out that neither Respondent nor the Attorney General cite to any statutory authority that would permit Respondent to issue an additional one thousand dollar (\$1,000.00) fine for a "knowing" violation of the Miss Utility statute. Petitioner asserts that P.U. § 12-135(a) clearly provides for a civil penalty "not exceeding" two thousand dollars (\$2,000.00) for



a first offense, and that an additional one thousand dollar (\$1,000.00) fine violates the clear and unambiguous language of the statute.

#### IV. Law

##### (a) Standard of Review

Under § 10-222(h) of the State Government ("S.G.") Article of the Maryland Code, a reviewing circuit court, in the case of administrative appeal from a final decision of an administrative agency, may:

- (1) remand the case for further proceedings;
- (2) affirm the final decision; or
- (3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision:
  - (i) is unconstitutional;
  - (ii) exceeds the statutory authority or jurisdiction of the final decision maker;
  - (iii) results from an unlawful procedure;
  - (iv) is affected by any other error of law;
  - (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
  - (vi) is arbitrary or capricious.

"A court's role in reviewing an administrative agency adjudicatory decision is narrow." *United Parcel v. People's Counsel*, 336 Md. 569, 576, (1994). Its scope of review "is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Id.* at 577. In applying the substantial evidence test, a reviewing court is to determine whether "a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005).

The grounds set forth in MD. CODE ANN., STATE GOV'T § 10-222(h) are limited, and do not "include disproportionality or abuse of discretion. As long as an

administrative sanction or decision does not exceed the agency's authority, is not unlawful, and is supported by competent, material and substantial evidence, there can be no judicial reversal or modification of the decision based on disproportionality or abuse of discretion unless, under the facts of a particular case, the disproportionality or abuse of discretion was so extreme and egregious that the reviewing court can properly deem the decision to be 'arbitrary or capricious.'" *Maryland Transp. Auth. v. King*, 369 Md. 274, 291 (2002); *see also Mesbahi v. Maryland State Bd. of Physicians*, 201 Md. App. 315, 330-31 (2011). An agency's decision may be deemed arbitrary and capricious if "it is contrary to or inconsistent with [the agency's] enabling statute's language or policy goals." *Harvey v. Marshall*, 389 Md. 243, 302 (2005). However, an administrative agency "has broad latitude in fashioning sanctions within legislatively designated limits." *Neutron Products, Inc. v. Dep't Of The Env't*, 166 Md. App. 549, 584 (2006).

#### **(b) Statutes**

In Maryland, excavations and demolitions are governed by Title 12 (titled "Underground Facilities") of the Public Utilities Article of the Maryland Code, known as the "Miss Utility Statute." The Miss Utility Statute requires an individual intending to perform excavation or demolition in the State to initiate a ticket request via a one-call telephone system at least forty-eight hours prior to the start of the demolition or excavation. Demolition or excavation may not commence until the owners of underground facilities (i.e., pipes, utilities, sewers, conduits, cables, etc...) in the vicinity have marked the area or given notice that marking is unnecessary. The system is intended to prevent death or injury to individuals engaged in excavation or demolition, public and private property damage, and the loss of services provided to the public.



In 2010, the General Assembly enacted legislation amending portions of the Miss Utility Statute. Among other things, the amendments created the Maryland Underground Facilities Damage Prevention Authority for purposes of hearing complaints and assessing fines and other appropriate relief for non-compliance with the Miss Utility Statute. With respect to Authority's power under the amended statute, P.U. § 12-112 states:

**In general**

(a) To enforce this subtitle, the Authority may:

- (1) hear complaints for violations of this subtitle;
- (2) after a hearing, assess a civil penalty under § 12-135 of this subtitle; and
- (3) reach a settlement instead of assessing a civil penalty.

**Powers of Authority**

(b)(1) The Authority may:

- (i) establish reasonable complaint filing fees and administrative fees for complaints heard by the Authority; and
  - (ii) use the services of a third party to collect civil penalties.
- (2) If the Authority determines that an individual cannot afford to pay a fee established under paragraph (1)(i) of this subsection, the Authority may exempt the individual wholly or partly from the fee.

**Notice and opportunity to be heard**

(c) The Authority may not assess a civil penalty against a person unless the person:

- (1) receives reasonable prior notice of the complaint; and
- (2) has an opportunity to be heard under § 12-113 of this subtitle.

As to the civil penalties that the Authority may assess against individuals, P.U. § 12-135 states, in pertinent part:

**Civil penalties assessed by Authority**

(a)(1) A person that performs an excavation or demolition without first providing the notice required under § 12-124(a) of this subtitle and damages, dislocates, or disturbs an underground facility is deemed negligent and is subject to a civil penalty assessed by the Authority not exceeding:

- (i) \$2,000 for the first offense; and
  - (ii) subject to subsection (c) of this section, \$4,000 for each subsequent offense.
- (2) Instead of or in addition to a civil penalty assessed under this subsection, the Authority may:
- (i) require that a person:



1. participate in damage prevention training; or
  2. implement procedures to mitigate the likelihood of damage to underground facilities; or
  - (ii) impose other similar measures.
- (3) A person that violates any provision of Part IV of this subtitle is subject to a civil penalty assessed by the Authority not exceeding \$2,000.

The Authority imposed monetary sanctions against Petitioner for its violation of

P.U. §§ 12-124(a) and 12-127(e). Section 12-124(a) of the Public Utility Article states:

**In general**

(a) A person that intends to perform an excavation or demolition in the State shall initiate a ticket request by notifying the one-call system serving the geographic area where the excavation or demolition is to be performed of the person's intent to perform the excavation or demolition.

Section 12-127(e) of the Public Utility Article states:

**Unmarked underground facilities**

(e)(1) If a person knows or has reason to know that an underground facility in the area of a planned or ongoing excavation or demolition is not marked as required by this subtitle, the person may not begin or continue the excavation or demolition unless the person:

- (i) has repeated the notification required under § 12-124 of this subtitle; and
- (ii) receives notification from the underground facilities information exchange system of the one-call system confirming that all applicable owner-members that have underground facilities in the vicinity of the excavation or demolition have marked:
  1. the underground facilities in accordance with § 12-126(c) of this subtitle; or
  2. the applicable portion of the underground facilities in accordance with 12-126(d) of this subtitle.

(2) If the underground facility is not marked as required by this subtitle after the person receives notification from the underground facilities information exchange system under paragraph (1) of this subsection, the person may proceed with the excavation or demolition.

**(c) *Cnty. Council for Montgomery Cnty. v. Investors Funding Corp.***

Petitioner relies heavily on *Cnty. Council for Montgomery Cnty. v. Investors Funding Corp.*, 270 Md. 403 (1973) ("*Investors Funding*") to support its contentions raised on review. As such, a thorough review of the case is instructive.

In 1972, the County Council for Montgomery County enacted Bill 19-71, which imposed comprehensive regulations relating to apartment rental business and its concomitant landlord-tenant relationships and activities in Montgomery County. *Investors Funding Corp.*, 270 Md. at 406. Among other things, the enacted regulations – Chapter 93A (“the Act”) – established a “commission and office to determine certain minimum rights and remedies, obligations and prohibitions, for landlords and tenants of certain kinds of residential property.” *Id.* The Commission’s powers included the authority to enforce provisions of the relevant legislation:

‘[T]hrough any appropriate means; including but not limited to . . . (ii) the imposition of a civil penalty, not in excess of \$1,000, for the violation of any provision of this Chapter, (iii) the imposition of an award of money damages against a landlord or tenant for the benefit of either as may be provided for in this Chapter, (iv) the ordering of repairs by a landlord or tenant, and (v) the investigation and conciliation of any violations of this Chapter or any complaints filed hereunder and the investigation of any matter relating to any license to conduct or operate a rental facility.’

*Investors Funding Corp.*, 270 Md. at 408.

Investors Funding Corporation, together with a number of other corporations and individuals engaged in the renting business in Montgomery County (“the landlords”), sought declaratory relief in the Circuit Court for Montgomery County. The landlords requested that the court declare that the Act violated the state and federal constitutions, and was otherwise beyond the power of the Council to enact. The court concluded that while the Council possessed the authority to enact Chapter 93A, a number its provisions “were illegal, unconstitutional or otherwise nugatory as being in conflict with the public general laws of the State.” *Investors Funding Corp.*, 270 Md. at 405. Both the landlords and the County Council appealed.



Before the Court of Appeals, the landlords contended that the circuit court correctly determined that certain provisions of Chapter 93A were unconstitutional, as the “provisions vested in an administrative body judicial powers reserved exclusively to the courts by Article IV, [§] 1 of the Maryland Constitution.”<sup>6</sup> *Investors Funding Corp.*, 270 Md. at 426. In response, the Council argued that the powers vested in the newly-created Commission were not judicial powers, but rather “adjudicatory and quasi-judicial functions which constitutionally can be delegated to an administrative agency.” *Id.* at 428.

In analyzing the contentions of the parties, the Court of Appeals acknowledged the inherent and historic conflict between Article IV, § 1 of the Maryland Constitution and administrative agencies. The Court recognized, however, a gradual relaxation of the tension between the two, “largely justified by reservation of ultimate authority in the courts.” *Investors Funding Corp.*, 270 Md. at 432. With specific respect to the separation of powers doctrine, the Court noted that “the existence of that doctrine does not itself inhibit the delegation to an administrative agency of a blend of executive or legislative powers with powers judicial in nature; the determining factor is not so much the specific powers granted to the administrative agency, but rather the relationship of the courts to the exercise of that power.” *Id.* at 436.

After conducting a thorough review of the powers of the Commission vis à vis judicial authority, the Court of Appeals held that:

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<sup>6</sup> “The Judicial power of this State is vested in a Court of Appeals, such intermediate courts of appeal as the General Assembly may create by law, Circuit Courts, Orphans’ Courts, and a District Court. These Courts shall be Courts of Record...” MD. CONST. art. IV, § 1



[T]he grant of remedial powers to the Commission to award money damages, terminate leases, order repairs and the return of security deposits and rental monies paid, and to award funds for temporary substitute housing does not constitute an invalid delegation of judicial power to an administrative agency in violation of the Maryland Constitution.

*Investors Funding Corp.*, 270 Md. at 440-41.

Although the Court of Appeals accepted the Council's grant of adjudicatory and remedial authority to the Commission as constitutionally permissible, the Court took issue with the Commission's power to enforce the provisions of the Act by imposing a civil penalty not exceeding \$1,000 for the violation of any the Act's provisions. *Investors Funding Corp.*, 270 Md. at 441. According to the Court, the Commission had "unrestricted, unbridled discretion in fixing the amount of the penalty, 'within broad limits, up to \$1,000 without regard to the nature or gravity of the violation.'" *Id.* The Court concluded that such broad discretion, without any legislative safeguards or standards to guide the Commission in exercising its discretion, constituted "an invalid delegation of legislative powers and otherwise violates due process of law requirements." *Id.* In declaring the Act illegal due to the lack of legislative safeguards and standards, the Court pointed out that "[n]o meaningful judicial review of the Commission's assessment of such penalties would appear possible in light of the unrestricted nature of the discretion sought to be vested in the Commission." *Id.* at 442.

Nevertheless, the Court recognized the "trend of cases is toward greater liberality in permitting grants of discretion to administrative officials, particularly in the fields of *public health and safety*, in order to facilitate the administration of the laws as the complexity of governmental and economic conditions increase." *Investors Funding Corp.*, 270 Md. at 442 (emphasis added). One of the cases illustrative of this "trend" cited

by the *Investors Funding Court* was *Pressman v. Barnes*, 209 Md. 544, 555 (1956), where the Court held:

Generally, a statute or ordinance vesting discretion in administrative officials without fixing any standards for their guidance is an unconstitutional delegation of legislative power. But [the Court] also hold[s], as a qualification of the general rule, that where the discretion to be exercised relates to police<sup>7</sup> regulations for the protection of public morals, health, safety, or general welfare, and it is impracticable to fix standards without destroying the flexibility necessary to enable the administrative officials to carry out the legislative will, legislation delegating such discretion without such restrictions may be valid.

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The modern tendency of the courts is toward greater liberality in permitting grants of discretion to administrative officials in order to facilitate the administration of the laws as the complexity of governmental and economic conditions increases.

## V. Discussion

Returning to the case at hand, as an initial matter, the Court notes that Petitioner does not challenge the factual findings of the Authority, including the Authority's determination that Petitioner violated the Miss Utility Statute. Rather, Petitioner contends that the Authority's power exceeds its statutory authority, the Maryland Constitution, and the Authority itself constitutes a violation of the separation of powers doctrine. The Court shall address each contention accordingly.

### (a) Delegation of power to the Authority

Petitioner argues that § 12-135 of Maryland Public Utilities Article of the Maryland Code violate Article 24 of the Maryland Declaration of Rights and Article IV of the Maryland Constitution in vesting plenary judiciary powers in the Maryland

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<sup>7</sup> It is evident to the this Court that, given the placement of the word "police," and the context of the passage in which it is used, the intended meaning of the word was that of "police powers" and not law enforcement. *See Tighe v. Osborne*, 149 Md. 349 (1925), "...police power is the power inherent in the state to prescribe within the limits of the federal and state Constitutions reasonable regulations necessary to preserve the public order, health, safety, or morals."



Underground Facilities Damage Prevention Authority (“the Authority”) to adjudicate all cases involving violations of the Miss Utility Statute.<sup>8</sup> The Court finds this assertion to be without merit.

In *Investors Funding Corp.*, the Court of Appeals specifically addressed the issue of the separation of powers doctrine as it related to the delegation of alleged judicial authority to an administrative agency. The Court held that “the existence of th[e] doctrine does not itself inhibit the delegation to an administrative agency of a blend of executive or legislative powers with powers judicial in nature; the determining factor is not so much the specific powers granted to the administrative agency, but rather the relationship of the courts to the exercise of that power.” *Investors Funding Corp.*, 270 Md. at 436.

This Court finds the above-quoted language instructive, and allows for the delegation of judicial or quasi-judicial powers to an administrative agency, so long as there is there an opportunity for judicial review of an agency’s decisions. *See Lussier v. Maryland Racing Comm’n*, 343 Md. 681, 707 (1996) (“[The Court of Appeals] ha[s] never allowed there to be a delegation to an administrative agency of adjudicatory power without insisting that it be accompanied by provisions for judicial review of the exercise of that power.”). The Miss Utility statute expressly provides that all decisions of the

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<sup>8</sup> Specifically, Petitioner states that:

[It] does not question the sweeping language of the Miss Utility Statute. Instead Petitioner takes issue with having to submit to the plenary jurisdiction of an administrative body with which it has no relationship, which can not only issue citations but adjudicate them, for any actions which in any way move dirt throughout the State of Maryland.

*Petitioner’s Memorandum of Points & Authorities*, at 6 (December 26, 2014).



Authority are subject to judicial review by the circuit courts of the State.<sup>9</sup> As such, the Authority does not constitute an impermissible delegation of judicial or legislative power.

#### **(b) Legislative Safeguards and Standards**

Relying once again on *Investors Funding Corp.*, Petitioner contends that the Miss Utility Statute violates Article IV, § 1 of the Maryland Constitution and/or Article 24 of the Maryland Declaration of Rights by vesting the Authority “unrestricted, unbridled discretion” in assessing penalties up to one thousand dollars (\$1,000.00) without any legislative safeguards or standards. As noted earlier, in *Investors Funding* the Court of Appeals held that the Commission’s discretion in fixing the amount of the penalty within broad limits, and without any legislative safeguards or standards to guide the Commission in exercising its discretion, constituted “an invalid delegation of legislative powers and otherwise violates due process of law requirements.” *Investors Funding Corp.*, 270 Md. at 441.

Petitioner, however, overlooks the *Investors Funding* Court’s recognition of the “trend of cases [] toward greater liberality in permitting grants of discretion to administrative officials, particularly in the fields of *public health and safety*, in order to facilitate the administration of the laws as the complexity of governmental and economic conditions increase.” *Investors Funding Corp.*, 270 Md. at 442 (emphasis added). In *Pressman v. Barnes*, 209 Md. 544, 555 (1956), for example, the Court of Appeals held that “where the discretion to be exercised relates to police regulations for the protection of public morals, health, safety, or general welfare, and it is impracticable to fix standards without destroying the flexibility necessary to enable the administrative officials to carry

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<sup>9</sup> See MD. CODE ANN., P.U. § 12-113(e)(1) “A person aggrieved by a decision of the Authority may, within 30 days after receiving the decision, request judicial review of the decision by the circuit court.”

out the legislative will, legislation delegating such discretion without such restrictions may be valid.”

In the present case, the discretion exercised by the Authority relates to underground facilities. That is, personal property that is “buried or submerged for use in connection with the storage or conveyance of water, sewage, oil, gas, or other substances; or the transmission or conveyance of electronic, telephonic, or telegraphic communications or electricity.” MD. CODE ANN., P.U. § 12-102(o)(1). Underground facilities include “pipes, sewers, conduits, cables, valves, lines, wires, manholes, [and] attachments.” MD. CODE ANN., P.U. § 12-102(o)(2).

Clearly, the regulation of the above-mentioned facilities directly relate to the health, safety, and general welfare of the public, as they affect basic utilities of modern life such as electricity, communication, and sewage management. The development, use, maintenance, and supervision of such facilities can be complicated, and involve private corporations, local and state government agencies, and the general public. In order to navigate the complexities of underground facilities damage prevention, the General Assembly created the Authority, and permitted it to exercise a certain degree of discretion in assessing penalties for violation of the Miss Utility Statute. Given the undeniable relation of underground facilities to the health and safety of the general public, and the inherent complexities of the underground facilities damage prevention, the Court finds the discretion of the Authority to be constitutionally permissible.

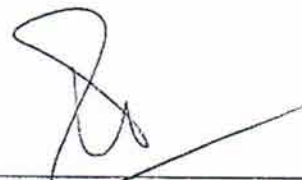
#### **(c) Scope of Statutory Authority**

Finally, as ancillary argument, Petitioner contends that the Authority exceeded its statutory authority by assessing a one thousand dollar (\$1,000.00) fine not provided by

statute. The Court finds Petitioner's argument to be without merit. Section 12-135(a)(3) states that "[a] person that violates any provision of Part IV of this subtitle is subject to a civil penalty assessed by the Authority not exceeding \$2, 000." In the case at bar, the Authority sanctioned Petitioner for violations of P.U. § 12-124(a) & § 12-127(e). Both sections are located in Part IV of the subtitle referenced in P.U. § 12-135, and both contain express prohibitory language or, in the case of P.U. § 12-124(a), impose affirmative duties that individuals engaged in certain activities must comply with. After conducting a hearing, the Authority determined that Petitioner violated of P.U. § 12-124(a) & § 12-127(e), and sanctioned Petitioner with the statutorily prescribed limits. As such, contrary to the argument of Petitioner, the Authority did not exceed its statutory authority.

## VI. Conclusion

For the reasons stated in this Memorandum Opinion, the Court shall affirm the decision of the Maryland Underground Facilities Damage Prevention Authority. An accompanying Order shall be entered, consistent with this Memorandum Opinion.



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William C. Mulford, II, Judge





IN THE MATTER OF  
RELIABLE CONTRACTING  
COMPANY

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE MARYLAND  
UNDERGROUND FACILITIES  
DAMAGE PREVENTION  
AUTHORITY

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* ANNE ARUNDEL COUNTY  
\*  
\* Case No.: C-13-182390


\* \* \* \* \*


ORDER

The above-captioned matter, having come before the Court on April 7, 2014 for judicial review of the decision of the Maryland Underground Facilities Damage Prevention Authority, the parties having been heard and arguments made, upon careful consideration of submitted pleadings, and for the reasons stated in the accompanying Memorandum Opinion, it is this 9<sup>th</sup> day of June, 2014, by the Circuit Court for Anne Arundel County hereby

**ORDERED**, that the decision of the Maryland Underground Facilities Damage Prevention Authority is **AFFIRMED**.

FILED  
JUN 11 2014  
CLERK  
10:01

  
\_\_\_\_\_  
William C. Mulford, II, Judge

RUECKEN  
EST Robert P. Duckworth, Clerk  
By:  Deputy



# **Decision**

**Case 02-C-13-180990**

**WSSC/Pinpoint Underground  
VS  
Maryland Underground  
Facilities Damage Prevention  
Authority**

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

In the Matter of Washington Suburban  
Sanitary Commission, et al.

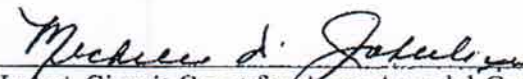
Civil Action No:  
02-C-13-180990

Agency Case Nos.:  
316a, 316b, 408, 411a, 411b

ORDER

Upon consideration of Petitioner, Washington Suburban Sanitary Commission, Memorandum, Respondent Maryland Underground Facilities Damage Prevention Authority's Response thereto, and after hearing oral argument on this matter, it is this 7<sup>th</sup> day of November, 2014, by the Circuit Court for Anne Arundel County, hereby

ORDERED, that the decision of the Maryland Underground Facilities Damage Prevention Authority in Agency Case Nos. 316a, 316b, 408, 411a, and 411b is hereby AFFIRMED.

  
Judge, Circuit Court for Anne Arundel County

Copies to: All counsel of record