



MARYLAND UNDERGROUND FACILITIES
DAMAGE PREVENTION AUTHORITY

Seventh Annual Report to the
Governor and the General Assembly
of Maryland

January 2018





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**MARYLAND UNDERGROUND DAMAGE FACILITIES
DAMAGE PREVENTION AUTHORITY**

7223 PARKWAY DRIVE, SUITE 100
HANOVER, MARYLAND 21076
(410)782-2102



Vincent D. Healy - Verizon
Underground Facility Owner
Chair

January 2018

Charles B. McCadden - BGE
Underground Facility Owner
Vice Chair

Honorable Lawrence J. Hogan, Jr.
Governor of Maryland; and

Matthew C. Ruddo - OCC, Inc.
One Call Center
Treasurer

Honorable Thomas V "Mike" Miller
President of the Maryland Senate; and

Erik L. Phillips - Utiliquest
Contract Locator
Secretary

Honorable Michael E. Busch
Speaker of the House of Delegates; and

Joyce P. Brooks - Public Representative
James J. DiPietro - MACo
Walter F. Gainer - AUC/Excavator
Jeffrey S. Garner - MML
George E. Taylor - PWCA/Excavator

Esteemed Members of both Houses
of the Maryland General Assembly

Members

Dear Gentlemen and Ladies:

James Barron
Executive Director
jim.barron@mddpa.org

Pursuant to the Public Utilities Article of the Annotated Code of Maryland, § 12-144 - Annual Reports, I hereby, as the 2018 Chair of the Maryland Underground Facilities Damage Prevention Authority ("the Authority"), submit to you this Seventh Annual Report. This document serves as an outline of the Authority's activities and accomplishments for the 2017 calendar year.

Susan A. M. Stroud
Deputy Director
susan.stroud@mddpa.org

info@mddpa.org
www.mddpa.org

Sincerely,

Vincent C. Healy
Authority Chairman

MARYLAND AUTHORITY 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.

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 in 2010.





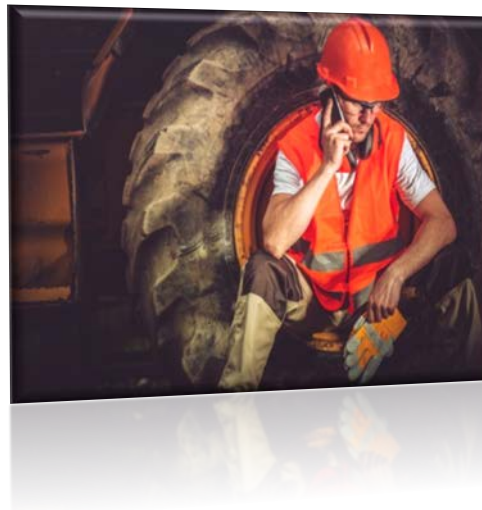
Executive Summary

The Maryland Underground Facilities Damage Prevention Authority (“The Authority”) was created by the Maryland General Assembly in 2010 to enforce the Miss Utility Law (Annotated Code of MD, Public Utilities, Title 12). This legislation was required by actions taken by the Federal Government which ordered all States and U.S. Territories to create a One-Call Compliance Program. The Authority seeks to protect all 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.

- The Authority met twelve (12) times during the 2017 Calendar year. The Authority received seventy-five (75) probable violations during this period and reviewed eighty 80 violations; which included fifty-eight cases (58) held over from 2016.
- The total fines assessed in 2017 were \$162,000.00. Utilizing Standardized Fining Matrix (SFM) required by 2016 Court of Appeals ruling those fines were reduced to \$126,475.00. The Authority also recommended Title XII Damage Prevention Safety training to all companies in violation of the statute. Those companies that participated in the voluntary training program were given a total of \$63,112.00 in incentive discounts.

- The Authority intends to amend the current statute in the 2019 re-write legislation to make Damage Prevention Training mandatory (the Authority provides the training at no charge to the violator). To-date, the Authority has \$30,112.00 in outstanding fines; which they are attempting to collect. There were six (6) hearings set by the Authority in 2017. Of those hearings, three (3) were heard, one (1) was settled prior to the hearing date and one (1) case was cancelled by the violator.
- Maryland currently ranks first in the nation for the lowest “hit rate” – 1.1%; which means there is only 1 one damage per 1000 Miss Utility tickets in our State. This success can be directly attributed to the aggressive education and outreach programs of the Authority and other stakeholders in the damage prevention community.
- The Authority was once again evaluated for its 2016 State Damage Prevention Program’s “Adequacy” by the Pipeline and Hazardous Material Safety Administration (PHMSA) which is a division of the United States Department of Transportation. This was the second annual evaluation for the Authority. In 2016, the Authority received an “Adequate” rating for its 2015 program. No formal announcement has been made on the evaluation finding, but the Authority feels confident that it will achieve another “Adequate” rating.
- The Authority received a \$99,950.00 State Based Program Federal Grant from the Pipeline & Hazardous Materials Safety Administration (PHMSA) in 2017. This is the sixth such award in the Authority’s eight (8) year history, making our total awards \$596,950.00. The PHMSA program is highly competitive, with all fifty (50) States and Territories competing for a portion of the \$1,000,000.00 set aside each year for State Damage Prevention Programs. The Maximum award is \$100,000.00 per State. The Authority intends to apply again in 2018 for additional funds for our data tracking initiative.
- In addition, the Authority website will undergo a complete overhaul; which will allow for greater ease in reporting violations, information sharing and report generation. This extensive undertaking was made possible by the Authority’s success in obtaining grants from PHMSA for special projects.

- The Authority's emphasis continues to focus on enforcement as required by changes to the Federal Rules governing the State-based Compliance programs (Rule 9). As a result, a permanent funding source for the Authority's day-to-day operations was needed. The 2016 Maryland Legislature approved the Authority request (HB696/SB480) and in 2016 the Authority began receiving on average \$20,000.00 a month in revenues from the .05 cent surcharge on all out going Miss Utility tickets. This amounted to \$233,628.55 in revenue in the first year from qualified Miss Utility members.
- It should be noted that all Maryland counties and Municipalities are exempted from the surcharge and any other charges associated with the issuance of a Miss Utility ticket under the current statute. They are however able to charge \$35.00 for locating their underground utilities and \$15.00 for a one-time re-mark. The Authority does not and has never sought grants or aid from the State of Maryland and all fines collected by the Authority are used solely for education and outreach purposes.



**Know what's below.
Call  before you dig.**

***Hand excavation is a Common Ground Alliance
“Best Practice”***

*Digging “test pits” or pot holing is a requirement of
the “Miss Utility” Law 12-127 (c)(2)*



This is not a Best Practice!



*This contractor not only violated the mechanical equipment
section of the law in **District Heights, Prince Georges County**, he also
drilled a hole in this large yellow gas main to see if it was pressurized.*

2017 Outreach and Education



- The Authority's Education and Outreach activities have continued to grow in 2017. The Authority has participated in eighteen (18) presentations and conferences and trained 5171 industry workers at sixty-four training sessions on the "Miss Utility" law in Maryland during the 2017 calendar year. This reflects a 65% increase over 2016 in the number of industry workers trained in the Title XII statute requirements. All fines collected from violators of the "Miss Utility" law go directly into the Authority's Education and Outreach Fund, which underwrites the Authority's training and community awareness programs.
- In addition, the Authority awards grants within the underground facilities network of owners to assist in their educational efforts. In 2017, the Authority received over \$33,000.00 in fines, none of which go to the day-to-day operation of the Authority. The Authority has \$30, 112.00 in outstanding fines which are actively being sought. The revenues from fines have been dramatically reduced due to the utilization of the Standardized Fining Matrix (SFM).

- The SFM was developed in response to the March 2016 Maryland Court of Special Appeals ruling (*Reliable Contracting v. Maryland Underground Facilities Damage Prevention Authority*) that requires the Authority to use three standards when assessing penalties: 1) Seriousness of the incident, 2) Intent to Follow the Law & 3) History of Previous Violations) which accounted for a \$35,525.00 reduction in Education & Outreach funds. Additionally, violators were given “up-front” discounts to encourage participation in the voluntary Damage Prevention Program. This accounted for an additional reduction amounting to \$63,112.00.
- The Authority website can also be accessed through the “Miss Utility”, One Call Concept and USPCDs websites; which are the portals for on-line excavation ticket requests. In addition, our members and allied partners are encouraged to share links that could be placed on the Authority’s website, to other relevant organizations, training opportunities and conferences. The Authority continues to purchase materials and create literature for distribution at the various conferences, conventions and trade shows and training sessions it attends.
- In 2017, the Authority purchased a 10 x10 display booth for the MD/DC DPC to use at the MML and MACo Conferences as well as other venues. Professionalizing and standardizing our image prevention theme and materials in conjunction with stakeholder partners has helped to send a stronger message about the legitimacy of the Authority and its Mission to prevent damage to underground facilities and to protect all Maryland citizens. The Authority and its partners continue to produce instructional materials in Spanish in order to better serve the many Latino underground utility and construction companies and their workers operating in Maryland today.

Is This a Violation?



Yes! Using mechanized equipment within 18" of an underground utility is a violation of §12-127(c)(3)

Maryland Authority Presentations

As the head of the Authority, the Executive Director is often called on to give presentations and represent the Authority around the State of Maryland and elsewhere. Below is a listing of the 2017 activities:

2017 – Eleven (11) monthly meetings of Maryland/DC Damage Prevention Committee, Hanover, Maryland

April 2017 - Comer Construction, Forest Hill, Maryland

March 2017 – Common Ground Alliance Damage Prevention Conference, Orlando, Florida

June 2017 – Maryland Municipal League Summer Conference, Ocean City, Maryland

June 2017 – MML - DPW Directors Committee – Annapolis, Maryland

August 2017 – Maryland Association of Counties Summer Conference, Ocean City, Maryland

September 2017- Grey & Sons Construction, Timonium, Maryland

October 2017 – Greater Chesapeake Damage Prevention Training Conference, Ocean City, Maryland

2017 MML Summer Conference



2017 Greater Chesapeake Damage Prevention Conference



Baltimore City



*Violation of §12-127(c)(2)
Using Mechanical Equipment within 18" of the Tolerance Zone
And within 18" of the Marks. Below this hammer
was a 115,000 volt electric cable.*

Are you a stakeholder?



The 2017 re-write of the Public Utilities - Title XII – Underground Facilities Law (“Miss Utility”) is about to begin.

Mark your calendars...

Monday, May 15, 2017 – 9:00 a.m.

OCC, Inc./Miss Utility Conference Room
7223 Parkway Drive, Hanover, MD 21076

For More Information Contact:

Jim Barron, Executive Director
Maryland Underground Facilities
Damage Prevention Authority
410-782-2102 or jim.barron@mddpa.org



Underground Utility
Owners

Contractors

Developers

Sediment Control
Installers

Builders/Remodelers

Demolition
Contractors

Excavators

Septic Installers

Landscapers

Clearing & Grubbers

Municipal & County
Governments

Homeowners

Realtors

Deck & Fence

Installers

Concrete

Driveway Contractors

Plumbers/Well Drillers

Locators

Electrical Contractors

Sign Installers




















Cable & Fiber Optic
Installers

Directional Drillers

Title 12 Rewrite



- Now that the Title XII law has been in effect for seven (7) years with only a few changes, the Stakeholders (Washington Gas, BGE, Comcast, Verizon, MML, MACo, Pipeline Operators, Locators, Utility Contractors etc.) encouraged the Authority to facilitate an overhaul of the underground facilities law. At the first meeting of the Title XII re-write in May 2017, the Steering Committee Composition was decided on. Participating groups were to appoint a lead representative and one alternative.

	
 Gas (1)	 Non-Utility Contractors (1)
 One-Call Center (1)	 MD Plumbing Board (1)
 MDOT (1)	 Locators (1)
 PSC (1)	 Utility Contractors (1)
 MUFDP (1)	 Electric (1)
 MD-DPC (1)	 Communications (1)
 Water/Sewer (1)	 MML (1)
 MD Realtors (1)	 MACo (1)
 MD Homebuilders (1)	

- It was decided that the group should meet at least twice a month and a target of the 2019 meeting of the Maryland General Assembly was set for introduction. In addition, the group decided that they would operate on a consensus model as they did when the law was originally written. Participants were encouraged to bring items to the table for discussion and the Authority presented a list of “issues” or unintended consequences that have arisen over the ensuing years.

- The committee meet twelve times (12) in 2017 with some significant agreements coming forward for the 2019 draft legislation. Some of the areas under discussion are mandatory Damage Prevention Training, address the abuse of Emergency Tickets, Responsible Contractor definitions as well as definitions that address changes in industry methods and practices such as “Cross Boring”. Penalties and training requirements are also under consideration. The complexity of underground facilities in the age of directional drilling have begun a conversation across the country about the inherent dangers associated with the practice.

*Below is a photograph of a gas main cross bore through a **WSSC** sewer main on **River Road in Montgomery County**, which was discovered in late 2017. Situations like this can cause a catastrophic event if not detected.*



- “Call before you Clear”- Several jurisdictions have initiated programs to encourage plumbers and public works employee to call before they clear sewer clogs outside the public right-of-way. This issue has arisen as a result of the proliferation of cross-bores and the ensuing dangers of clearing sewer clogs with mechanical devices. Several remedies are under discussion in the rewrite committee. In 2016, the Authority amended the Title XII statute to require sewer laterals on private property to be equipped with detectable tracer wire in order to address threats of cross boring to homeowners. Fortunately, the 2016 Maryland Legislature overwhelmingly approved the measure; which was a big first step in addressing the issue.

- Across the State of Maryland, a myriad number of “legacy” cross bores go undetected. Under current statute, storm water lines are not required to be marked nor are they detectable in today’s world, these innocuous conduits for stormwater can become ticking time-bombs if they have been compromised by a gas main or high voltage Electric lines. This has become a health and safety issue for utility maintenance workers as well as the general public. The Title XII Committee feels it is imperative to address this issue in the 2019 draft.

Storm Sewer Gas Line Cross Bore



*This is what excavators deal with every day in **Baltimore City***



New Carrollton, Prince Georges County



During this deck installation, the Contractor removed the bollard meant to protect the Gas Meter in order to auger a hole for a deck support column.

**Operating Practices
of the
Maryland Underground Facilities Damage Prevention Authority**

NPV Procedures 3.0

- 1) Upon receipt of a Notice of Probable Violation (NPV) from the complainant, the Authority verifies the contact and incident information contained in the on-line submittal for sufficiency and accuracy and then notifies the probable violator via Notice of Investigation (NOI) and the complainant via Notice of Receipt (NOR) by regular US mail. The probable violator is encouraged to contact the Authority upon receiving the NOI letter in order to provide additional information.
- 2) The Executive Director shall complete a thorough and comprehensive investigation of the facts surrounding the NPV. The Executive Director shall determine whether he believes a violation of Subtitle 1 of Title 12 of the Maryland Public Utilities Article has occurred and a penalty is due based on such investigation. In its March 28, 2016 decision in *Reliable Contracting v. Maryland Underground Facilities Damage Prevention Authority* upholding the constitutionality of the Authority, the Maryland Court of Appeal directed the Authority to use the following three factors to determine the amount of any penalty assessed by the Authority: a) seriousness of the violation, b) intent (“good faith”) of the violator, c) past history of violations. The Authority used these factors to create a Standardized Fining Matrix (“SFM”). The Executive Director shall use the SFM to determine the amount of the penalty to recommend to the Authority.
- 3) The Executive Director shall then present the entire review of the NPV together with all supporting documentation and the SFM calculations to the Authority at its next regularly scheduled closed meeting. At the closed meeting, the Authority will a) decide that a civil penalty and/or training be imposed after the probable violator is notified and given the opportunity to attend a hearing, (b) request additional investigation to acquire more information and documentation for further review of the NPV before making a decision, or (c) dismiss the NPV for (i) lack of documented violation, (ii) lack of documented probable violator, (iii) lack of sufficient evidence and documentation to proceed with any further investigation or (iv) any reason the Authority may deem reasonable for not proceeding with any further investigation or review of the NPV.

- 4) If the Authority determines that a civil penalty and/or training be imposed after the opportunity for a hearing, the Executive Director will notify the probable violator by certified and first-class mail sent to the address of the probable violator on the records of the Authority or, if an entity, to the address on the records of the Maryland State Department of Assessments and Taxation of (a) establishment of the Authority and its legislative intent and authority, (b) details of the NPV as outlined in the initial submission by the complainant, (c) research of the Authority, (d) possible effects of §12-135 of the Maryland Public Utilities Article, (e) probable violator's rights, remedies and options, and (f) existence of Maryland's Administrative Procedure Act (APA) and how it impacts the hearing process. The notice shall request that the probable violator contact the Authority within thirty (30) days of the date of the notice.
- 5) If the probable violator does not respond to the Authority's letter within thirty (30) days, the Executive Director shall send a second letter using the process set forth in section 4. This notice may also be delivered by process server.
- 6) If the probable violator responds to either the first or second letter, a settlement may be reached pursuant to which the amount of the penalty initially determined may be reduced.
- 7) If the probable violator does not respond within thirty (30) days of the second letter, the Executive Director shall bring the issue back to the Authority at its next regularly scheduled meeting, at which time the Authority shall assign a hearing date for the NPV. The probable violator shall be notified of the hearing date using the process described in section 4 and section 5. The Authority may subpoena witnesses.
- 8) On the date of the hearing, the Executive Director shall present the evidence of the violation. The probable violator shall have the opportunity to submit evidence and present a defense. All testimony shall be given under oath and the proceedings shall be recorded. If the probable violator fails to appear, that fact shall be noted. After the hearing, the Authority shall meet in closed Executive Session and determine whether A) a penalty should be assessed against the probable violator and B) if the penalty should be assessed, the amount of such penalty, using the SFM. The Authority may determine that instead of or in addition to a penalty, it will require the probable violator to participate in damage prevention training. The Authority shall issue a decision in writing, stating the reason for its decision.

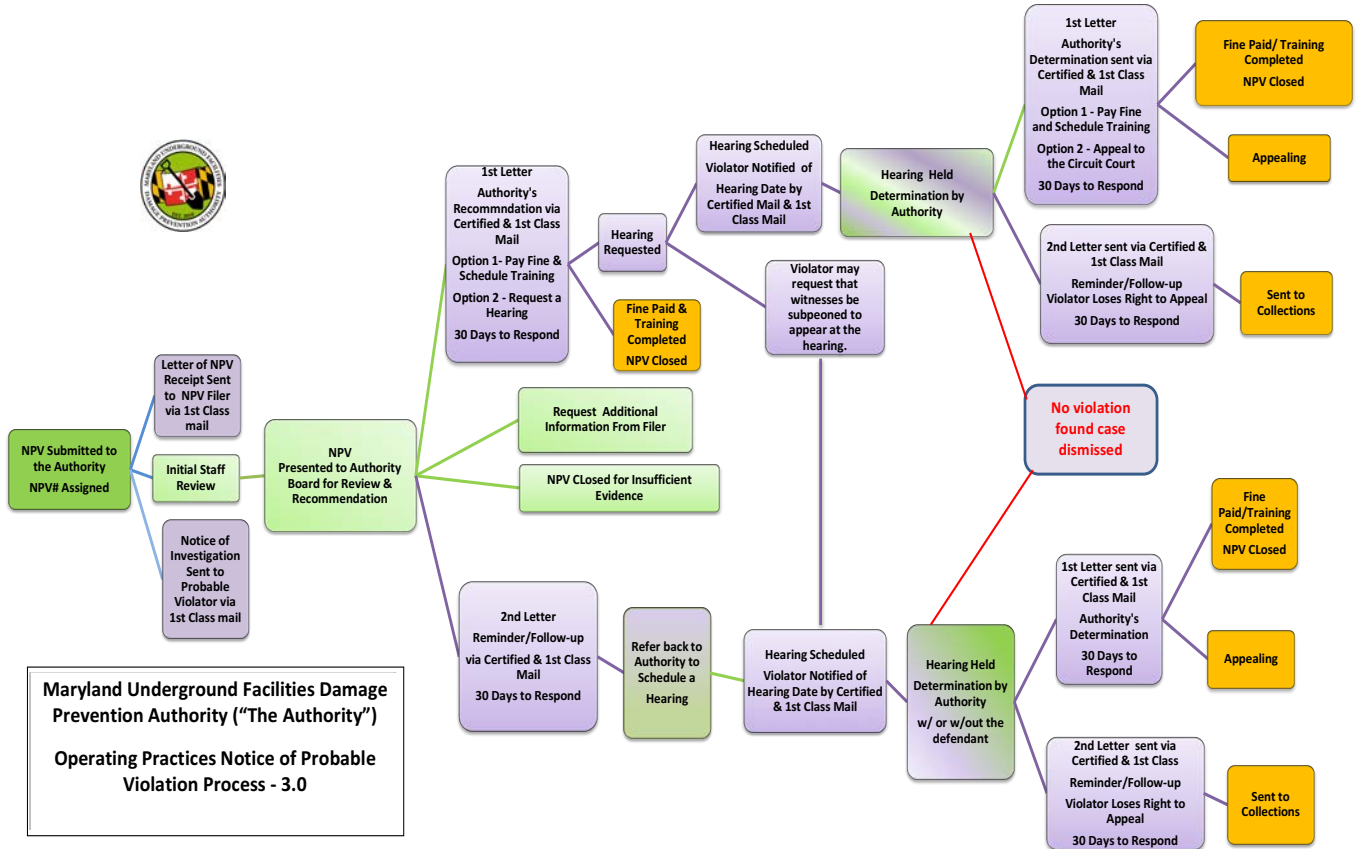
- 9) The Executive Director shall send a copy of the written decision of the Authority to the probable violator by certified and first-class mail and shall notify the probable violator of the right of any person aggrieved by a decision of the Authority to request judicial review by the Circuit Court for Anne Arundel County, Maryland within thirty days (30) after receiving the decision.
- 10) Should the probable violator miss the thirty-day (30) deadline within which the violator must seek judicial review, a second letter will be sent by both certified and first-class mail notifying the probable violator that it has lost its right to appeal to the Circuit Court. (Note: If at any time during these time frames, the Authority receives payment for the civil fine and notification of participation in Title XII training, the case will be closed).
- 11) If there is still no response from the probable violator, the case will be sent for collection action. In addition to collection action, any probable violator who does not fulfill any of the requirements set down by the Authority, will be placed in a Closed/Incomplete Status, which can be used as evidence when applying SFM standards in any future probable violation hearing before the Authority.

Is This a Violation?



Yes! Removing Asphalt or Concrete without a Miss Utility Ticket is considered excavation activity and is a violation of Title XII

The NPV Process



Who Needs a "Miss Utility" Ticket?



Not Fido!

NPV's by the Numbers

- Since its inception in 2011, the Authority has received 323 Notices of Probable Violations (NPV) and has collected \$229,392.45 in fines for the Education and Outreach Fund.

Could this be a Violation?



Yes! Any demolition activity in Maryland requires a "Miss Utility" ticket

2017 NPV Breakdown

- The Authority received **seventy-five** (75) Notices of Probable Violation (NPV's) in 2017, and reviewed **ninety-one** (91) NPV's resulting in the assessment of \$126,475.00 in civil penalties. Those companies that took the proscribed Damage Prevention Training were given \$63,112.00 in fine discounts.
- **Fifty-eight** (58) NPV's carried over from 2016 and were acted upon in 2017.
- **Forty-four** (44) NPV's dating back to 2013 were statused "Closed/Incomplete". These cases received this status due to a number of reasons. Most notably were those companies that refused to accept the Certified Mail notices or had bad addresses and were not locatable. Another group refused to participate in Damage Prevention Training or took training but did not pay their fines. NPV's in this category will be reopened should another violation be reported to the Authority and used as additional evidence when being evaluated by the Authority Board.

- **Seven** (7) NPV's were closed in 2017 because the Authority determined there was no violation of the statute or there was insufficient evidence.
- **Forty-nine** (49) NPV's were reviewed in 2017 with fines totaling \$12,556.00 and Damage Prevention Training required.
- **Fifty-three** (53) NPV's remain open awaiting hearings, training, fine remittance or review.

How the Statute is Abused in 2017

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 – Public Utilities statute. Those probable violations breakdown into the following categories identified in the statute and in the numbers associated with each probable violation filed.

Section §12-124 – Notice to One-Call System

- Of the seventy-six (76) probable violations filed.
- Fifty-eight (58) were failure to call, 1st offense.
- Three (3) were failure to call, 2nd offense.
- Two (2) were failure to call, 3rd offense.
- One (1) ticket had yet cleared.

Section §12-126 – Marking Requirements.

- Of the Five (5) probable violations filed.
- Four (4) were no marks.
- One (1) was a miss-mark.

Section §12-127 – Excavation after Notice that Facilities are either Marked or are No Conflict.

- Of the fifty-one (51) probable violations filed.
- Eight (8) were Duties of Excavators.
- Seven (7) were no test pit dug.
- Thirty-six (36) were clear evidence.

Ellicott City, Howard County



This is an example of a "hit kit" which is used to identify the damaged area during a typical investigation. The damaged gas service line lays under the tolerance zone measure, the white paint circle shows where the original red mark for gas service Was at the time of excavation. The violation in this photograph is digging within the 18" tolerance zone §12-127(c)(2).

Parkville, Baltimore County



This Damage Occurred when a Contractor attempted to clean out a Storm Water Management Pond without a “Miss Utility” Ticket! The Contractor broke a small gas service line off a large gas transmission line. This was the 2nd violation by this Contractor, who has refused to take Damage Prevention Training or pay the fine imposed by the Authority.

*Deck installations cause a multitude of damages to
Underground Facilities in Maryland!*

Silver Spring, Montgomery County



*This is a violation of §12-124(No ticket) and §12-126(Clear Evidence)
This deck installer in did not have a "Miss Utility" ticket and was digging
immediately in front of a gas meter... Why was he surprised when he struck
a gas line?*

***Pipeline and Hazardous Materials Safety Administration
(PHMSA)***

United States Department of Transportation

2016 Program Adequacy Evolution Criteria Memo

On Fri, Jun 30, 2017 at 2:08 PM, Appelbaum, David (PHMSA)

<carl.appelbaum@dot.gov> wrote:

Program Manager,

I've been tasked to evaluate your 2016 excavation damage prevention law enforcement program. Attached you will find our updated evaluation checklist and ask that you begin to fill this out. Please take the opportunity to read through the criterion guidance as we have amended/enhanced some of the language. Soon I will schedule a conference call with you to conduct the evaluation. If you would prefer that I conduct the evaluation in person, please let me know as soon as possible so I can get it approved and scheduled. Additionally, please plan on inviting any relevant individuals you feel should participate in the evaluation.

I want to highlight some points of interest on this year's evaluation:

- 1 Criterion 3 and Criterion 7: There will be enhanced scrutiny on the collection, analysis and use of damage data and associated enforcement actions.
- 2 Guidance for Criterion 6.c. will read: "Reporting damages to a one-call center may suffice for contacting the operator directly. PHMSA urges all States to review the definitions for excavators and excavation in their excavation damage prevention law to ensure the law does not exempt anyone from the reporting requirements of 49 USC § 60114 and 49 CFR Part 198.55. "Damage" is defined as any excavation activity that results in the need to repair or replace a pipeline due to a weakening, or the partial or complete destruction, of the pipeline, including, but not limited to, the pipe, appurtenances to the pipe, protective coatings, support, cathodic protection or the housing for the line device or facility. "Excavation" refers to excavation activities as defined in 49 CFR 192.614, and covers all excavation activity involving both mechanized and non-mechanized equipment, including hand tools. "Excavator" means any person or legal entity, public or private, proposing to or engaging in excavation.

Scoring Change Starting in CY 2021: PHMSA will score a State as "needs improvement" if either the State's excavation damage prevention requirements are not explicit on this point or the State's definition of an "excavation" and/or "excavator" allows, or potentially allows,

for certain parties (i.e., individuals covered under an exemption) to be immune from these reporting requirements.”

3 Criterion 6.d.: There will be enhanced scrutiny to ensure your State is aligned with 49 U.S. Code § 60114(d) and explicitly requires an excavator who causes damage to a pipeline facility that results in the release of any PHMSA-regulated natural or other gas or hazardous liquid to promptly report the release to emergency responders by calling the 911 emergency telephone number or another emergency telephone number. It was discovered last year that many states’ regulatory language is ambiguous on this matter and potentially provides an excavator the ability to use discretion on calling 911.

Again, in the near future I’ll contact you to schedule our evaluation. Also, when sending back the above completed checklist, please send me electronic copies of your one call law, procedures, regulations, and other relevant information that are not available online. If you have any questions, please feel free to call me or email.

Best,

C. David Appelbaum

State Evaluator – PHP50

Pipeline and Hazardous Materials Safety Administration

U. S. Department of Transportation

Office: [\(208\) 262-8867](tel:2082628867)

Mobile: [\(925\) 750-3636](tel:9257503636)

Email: carl.appelbaum@dot.gov



The Evaluation

Notes from the October 23, 2017 Teleconference with PHMSA for the 2016 Evaluation

Attending

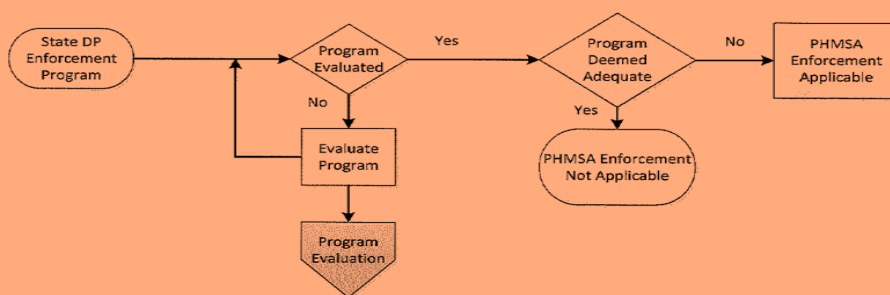
Dave Applebaum – PHMSA
John Clementson – MD PSC
Tom Hasting – MUFDP
Vince Healy – MUFDP
Jim Barron – MUFDP
Susan Stroud – MUFDP

- Disproportionate violations reported on the Excavation Community – Since the Authority is a Complaint Driven Enforcement Authority, and the majority of complaints are filed by facility owner/operators; and not by other stakeholders, particularly not by excavators. This creates an inequitable enforcement problem (i.e. there are not a sufficient number of complaints concerning utility locating practices). To attempt remedy this situation PHMSA suggested that the Authority should:
 - Gather damage reports from the One Call Center and look particularly at reports involved with inadequate locating practices, and
 - File complaints in those areas, in an attempt to reduce inequities for the.
- Homeowner Exemption (§12-103) – any homeowner in Maryland excavating without the use of mechanical equipment on their own property is exempted from the “Miss Utility” law. If a homeowner damages an underground facility during that exempted excavation and repairs the damaged line with duct tape and gorilla glue should this constitute a violation of §12-127 (d) which requires any damage to underground utilities be reported?
- Effectiveness - Does the enforcement authority assess the effectiveness of enforcement actions over time using data and other relevant information?
No, because the data collected over time by the Authority is skewed because of the “Complaint Driven” model utilized in Maryland. PHMSA would like to have all fifty States us mandatory reporting for precise data collection. There is resistance in the stakeholder community to implement mandatory reporting. The Authority will probably receive a 0 in this criterion!

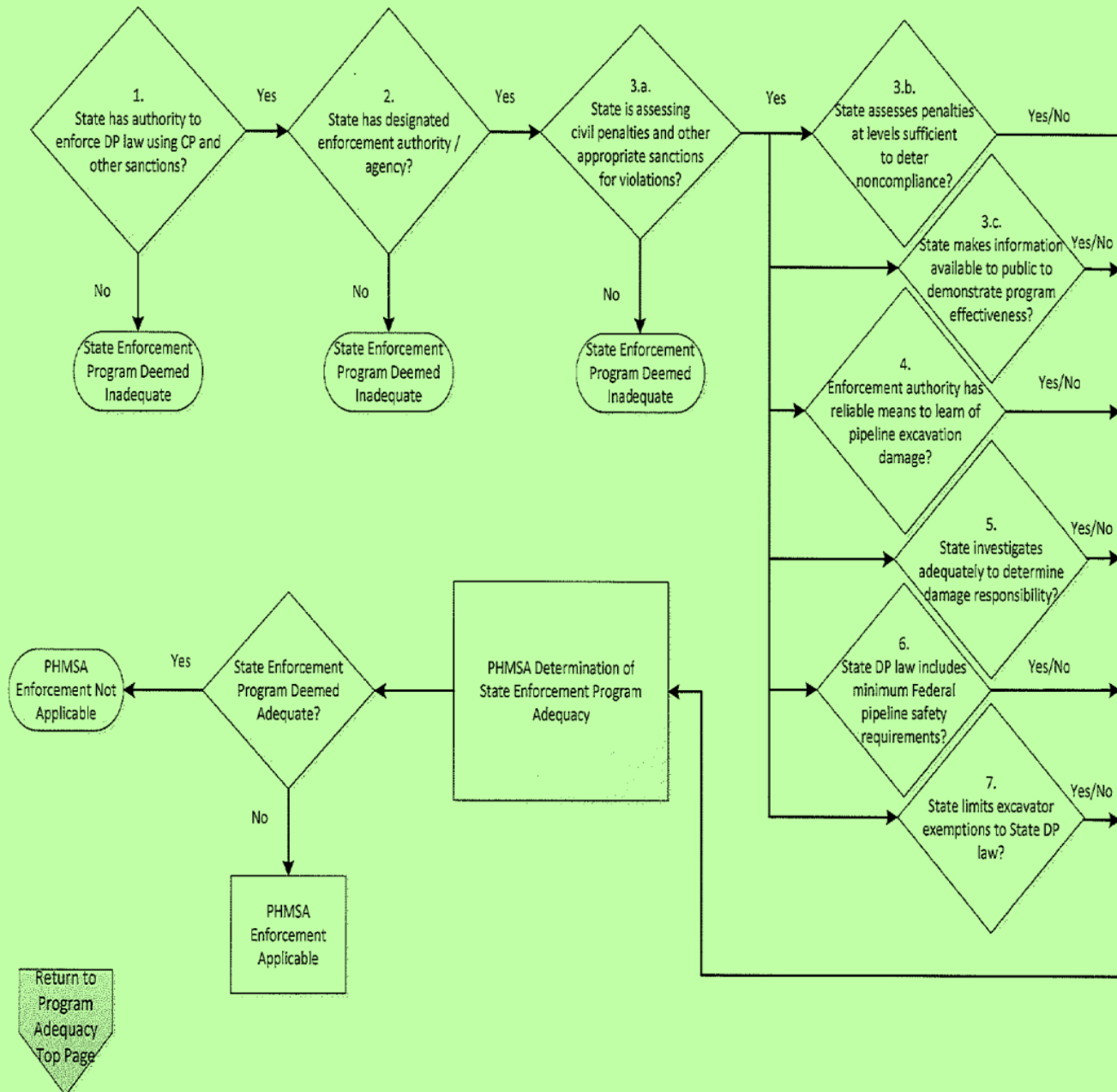
The PHMSA Evaluation Process

State Damage Prevention Enforcement Program Adequacy

- Reference: 49 CFR 198 Subpart D
- Note: 49 USC 60114(f) limitation is not applicable to PHMSA 1st and 2nd party excavator enforcement



Evaluating Adequacy of State Enforcement Programs



DOT Issues Nearly \$2.5 Million in Grants to State Entities, Local Communities, and Non-Profit Organizations to Spur Involvement in Pipeline Safety Efforts

PHMSA 18-17

Friday, September 29, 2017

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WASHINGTON – The U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) announced today that it is issuing \$2,488,497 in grants to state entities, local communities, and non-profit organizations to address pipeline safety challenges related to damage prevention and to promote more involvement in local pipeline safety initiatives and awareness efforts. The grants are being awarded to governmental entities and organizations spread across 24 states and the Commonwealth of Puerto Rico.

“The grants we’re issuing today are more than just about protecting pipelines or promoting awareness, it’s about saving lives,” said U.S. Transportation Secretary Elaine L. Chao. “States and localities know best what their unique challenges are and these grants will help them develop specific solutions to meet their individual pipeline safety needs.”

Of the grants issued today, PHMSA is awarding \$1,499,939 in [State Damage Prevention](#) (SDP) program grants to 16 states and Puerto Rico. Awarded annually, the grants are used to strengthen efforts in addressing pipeline failures attributed to activities such as excavation damage, one of the leading causes of pipeline accidents resulting in fatality or injury. The grants are also used to assist in establishing damage prevention programs where they do not currently exist.

Since 2006, excavation damage has resulted in over 33 human fatalities, 144 injuries, and over \$249 million in property damage nationwide. PHMSA has awarded more than \$13.6 million in SDP grants to 40 state entities since 2008 to encourage states to continue implementing the [nine elements of an effective damage prevention program](#), outlined in the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006. Program elements include the use of effective communications, partnerships, fair and consistent enforcement, training, and technology to help minimize the possibility of negative consequences resulting from inadvertent contact with underground pipelines. The complete breakdown of the SDP grant recipients and awarded amounts are in Table 1 listed below.

To accompany its SDP grants, PHMSA awarded a total of \$988,558 in pipeline safety grants for technical assistance to 12 local community and non-profit organizations. PHMSA’s [Technical Assistance Grant \(TAG\)](#) program encourages local communities and non-profit organizations to help communities develop pipeline safety and education programs specific to their needs through technical assistance.

The TAG awards provide funding for a broad range of activities, including improving or developing local pipeline emergency response capabilities, safe digging or damage prevention programs, pipeline safety information resources, community and pipeline awareness campaigns, and public participation in official proceedings that pertain to pipelines.

Since the TAG program's inception in 2009, PHMSA has awarded more than \$7 million to fund 166 individual technical assistance projects to help local communities and organizations address their pipeline safety needs. The complete breakdown of the TAG recipients and awarded amounts are in Table 2 listed below.

Table 1: FY 2017 State Damage Prevention Grant Funding

Grantee	Amount
Colorado 811	\$100,000
Connecticut Call Before You Dig, Inc.	\$97,920
Idaho Division of Building Safety	\$90,000
Indiana Utility Regulatory Commission	\$100,000
Kansas Corporation Commission	\$90,033
Louisiana Department of Natural Resources	\$80,000
Maryland Underground Facilities Damage Prevention Authority	\$99,950
Michigan Public Service Commission	\$97,104
Minnesota Office of Pipeline Safety	\$100,000
Mississippi Public Service Commission	\$97,500
Missouri Public Service Commission	\$69,675
Nebraska State Fire Marshal	\$98,707
Nevada Public Utilities Commission	\$85,000
New Jersey Board of Public Utilities	\$100,000
New Mexico Pipeline Safety Bureau	\$67,550
New York 811	\$30,000
Puerto Rico Department of Transportation and Public Works	\$96,500

Marley Neck Blvd, Glen Burnie, Anne Arundel County



This major communication conduit was severely damaged due to the violation of §12-126, "failure to properly locate an underground facility". The violator was billed \$150,000 by the facility owner and was fined by the Authority as well. Non-compliance of the Title XII Statute can be very costly.

Indian Head, Charles County



This is the 3rd violation for this Contractor, he did not have a "Miss Utility" Ticket and was operating mechanical equipment

within 18" of a utility and ignored the "clear evidence" - the gas meter on the house.

**MARYLAND UNDERGROUND FACILITIES
DAMAGE PREVENTION AUTHORITY**

7223 Parkway Drive, Suite 100
Hanover, MD 21076
410-782-2102
www.mddpa.org

Member	Representing	Company	Contact Information
Joyce P. Brooks Exp. 9/30/2019	General Public	Somerset Group Consulting, Inc.	11470 Duley Station Road Upper Marlboro, MD 20772 jb Brooks@earthlink.net
James J. DiPietro Exp. 9/30/2017	Maryland Association of Counties	Anne Arundel County Dept. of Public Works	437 Maxwell Frye Road Millersville, MD 21108 Pwdipi99@aacounty.org
Walter F. Gainer Exp. 09/30/2018	Associated Utility Contractors of Maryland	W. F. Wilson & Sons	6586 Meadowridge Rd Elkridge, MD 21075 jlarkins@wfwilson.ne
Jeffrey S. Garner Exp. 9/30/2018	Maryland Municipal League	Town of La Plata Public Works	P.O. Box 2268 305 Queen Anne Street La Plata, MD 20646 jgarner@townoflaplata.org
Vincent C. Healy Chairman Exp. 9/30/2018	Underground Facility Owner	Verizon	223 E. Memorial Blvd. Hagerstown, MD 21740 vincent.c.healy@verizon.com
Charles B. McCadden Vice-Chairman Exp. 9/30/2017	Underground Facilities Owner	BGE	Pumphrey Training Center 4547 Annapolis Road Baltimore, MD 21227 Charles.Mccadden@bge.com
Erik L. Philips Secretary Exp. 9/30/2019	Underground Utility Locator	Utiliquest	8281 Bodkin Avenue Pasadena, MD 21122 Erik.phillips@utiliquest.com
Matthew C. Ruddo Treasurer Exp. 9/30/2018	One Call Centers	One Call Concepts, Inc.	7223 Parkway Dr. Hanover, MD 21076 mruddo@occinc.com
George E. "Bucky" Taylor Exp. 9/30/2019	Public Works Contractors Association	Taylor Utilities, Inc.	232 Westhampton Place Capitol Heights, MD 20743 taylorutilities@comcast.net
STAFF			
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Susan Ann Mary Stroud Deputy Director		MUFDPA	7223 Parkway Drive Hanover, MD 21076 susan.stroud@mddpa.org



2018 Authority Meeting Calendar

Miss Utility Conference Center
7223 Parkway Drive,
Hanover, Maryland

Wednesday	January 3 rd	Open Session & Closed Executive Session
General Assembly	January 10th - April 9th	Annapolis, MD
Wednesday	February 7 th	Open Session & Closed Executive Session
Wednesday	March 14 th	Open Session & Closed Executive Session
CGA Conference	March 6th - 8th	Phoenix, AZ
Wednesday	April 4 th	Open Session & Closed Executive Session
Wednesday	May 2 nd	Open Session & Closed Executive Session
Wednesday	June 6 th	Open Session & Closed Executive Session
MML Conference	June 10th - 13th	Ocean City, MD
Wednesday	July 11 th	Open Session & Closed Executive Session
Wednesday	August 1 st	Open Session & Closed Executive Session
MACo Conference	August 15th - 18th	Ocean City, MD
Wednesday	September 5 th	Open Session & Closed Executive Session
Wednesday	October 3 rd	Open Session & Closed Executive Session
GCDPC	October 24th - 26th	Ocean City, MD
Wednesday	November 7 th	Open Session & Closed Executive Session
Wednesday	December 5 th	Open Session & Closed Executive Session

The Authority Going Forward

- The Authority has contracted with Lufborrow and Associates to develop a Case Management System in order to better address the volume of correspondence, time lines and report production required by law. The Authority is governed by APA rules and must provide all violators with their due process. The funds to develop this custom program come from the grant monies obtained from PHMSA is grant years 2016, 2017 and 2018 for the final phase.
- In addition, the Authority website will undergo a complete overhaul; which will allow for greater ease in reporting violations, information sharing and report generation. Training modules will be developed to provide continuing education for those workers and industry professionals who need a refresh on the Title XII law.
- Plans are also underway to develop a bi-lingual mobile app to assist anyone in Maryland who plans dig, disturb or demolish the ground. The app will be free to the general public.
- Work will continue on the re-writing of the Title XII law in 2018. The groups target is introduction in the 2019 session of the Maryland General Assembly. This means that all amendments and new language will have to be ready by early fall of 2018. As this is a consensus based process, the finished version of the draft will have been fully vetted within the underground facility community.

