



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

**MARYLAND UNDERGROUND FACILITIES  
DAMAGE PREVENTION AUTHORITY**

**7223 Parkway Drive, Suite 210**

**Hanover, MD 21076**

**410-782-2037**

**Email- [info@mddpa.org](mailto:info@mddpa.org)**

**Web- [www.mddpa.org](http://www.mddpa.org)**

**January 2014**



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**Maryland Underground Facilities  
Damage Prevention Authority**

7223 Parkway Drive, Suite 210  
Hanover, MD 21076  
(410) 782-2037

R. Thomas Hoff, Sr.  
*Chairman*

Kevin Woolbright  
*Vice Chairman*

Cynthia Flanders  
*Treasurer*

Thomas C. Baldwin  
Arthur I. Bell III  
Bernard W. Cochran  
Marcia M. Collins  
Walter F. Gainer  
Thomas L. Hastings

James Barron  
*Executive Director*

Laura Olander  
*Office Associate*

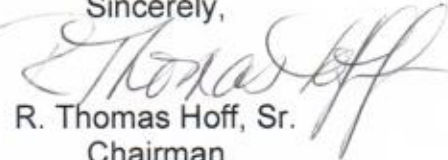
Bruce C. Bereano  
*Staff*

[info@mddpa.org](mailto:info@mddpa.org)  
[www.mddpa.org](http://www.mddpa.org)

January 2014

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 12-0114, I hereby, as the 2013 Chairman of the Maryland Underground Facilities Damage Prevention Authority submit this Third Report to the Governor and the General Assembly of Maryland for Calendar Year 2013 on the Activities of the Authority during the Calendar Year 2013

Sincerely,  
  
R. Thomas Hoff, Sr.  
Chairman





## **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 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 very effective Damage Prevention Committee created privately by the stakeholders over three 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 15 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 15 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.



## **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 OFFICIALS

<u>MEMBER</u>	<u>REPRESENTING</u>	<u>ORGANIZATION</u>
R. Thomas Hoff, Sr., Chairman	One Call Centers	One Call Concepts, Inc.
Kevin Woolbright, Vice Chairman	Underground Facility Owners	WSSC
Cynthia Flanders, Treasurer	General Public	Skipjack Partners, LLC
Thomas C. Baldwin	Underground Facility Owners	BGE
Arthur Bell	Associated Utility Contractors of Maryland	Burgemeister-Bell Inc.
Bernard W. Cochran	Maryland Municipal League	City of Chesapeake Beach DPW
Marcia Collins	Maryland Association of Counties	Baltimore City DPW
Walter F. Gainer	Public Works Contractors Association	W.F. Wilson & Sons, Inc.
Walter W. Gilmer*	Underground Utility Locators	USIC
Thomas L. Hastings**	Underground Utility Locators	One Call Concepts Locating Services

## STAFF

Bruce C. Bereano, Secretary	Office of Bruce C. Bereano
James A. Barron, Executive Director	Barron Consulting Services, LLC
Laura Olander, Executive Assistant	One Call Concepts, Inc.

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\* Appointment ended September, 2013.

\*\*Thomas L. Hastings of One Call Concepts Locating Services was appointed by the Governor upon the recommendation of the Maryland Damage Prevention Committee and began service November, 2013.



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

### **During Calendar Year 2013**

Since January 1, 2013, the Authority, which is fully appointed by the Governor and therefore operational, the Authority has conducted the following activities and actions:

1. The Authority has held 10 publically announced meetings at the Miss Utility One Call Center, conference room, Hanover, Maryland. All meeting dates were announced and posted in the General Assembly Notice of Meetings document and on the Authority website.
2. The Authority re-elected officers who are R. Thomas Hoff, Sr. as Chairman, Kevin Woolbright as Vice Chairman, and Cynthia Flanders as Treasurer.
3. The Authority was awarded a \$95,000 State Damage Prevention Grant from the Pipeline and Hazardous Materials Safety Administration (PHMSA) and received \$47,500 of the award in November of 2012.
4. Now that the Authority had operating funds, they conducted a search for an Executive Director. After a vetting and interview process, they hired James A. Barron by contract with Barron Consulting Services, LLC to fill that position. 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 in when it was initially authorized in 2011.

5. 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.
6. The Authority adopted as required by law a Code of Conduct for its members, copy of which is Appendix B of this Report.
7. The Authority's PowerPoint presentation was 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 2013. The presentation was presented at the Maryland Municipal League conference in June, the Maryland Association of Counties in August and at the Greater Chesapeake Damage Prevention Conference in October. Outreach continued with several Authority members attending all three of the aforementioned conferences. New Authority brochures were developed and distributed at the various conferences and at other educational opportunities.
8. Links to the Authority's website were 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.
9. A process was developed and adopted by the members to receive, screen, and accept incidents for hearing by the



Authority. The first hearings in front of the Authority were conducted at the July 10, 2013 meeting of the Authority. Not all incidents will require consideration and a hearing by the Authority.

10. The Authority received forty-five (45) Notices of Probable Violation (NPV's) in 2013. They formally researched, reviewed and acted upon twenty-nine (29) of the NPV's received. At the close of 2013, the remaining sixteen (16) were still in research and will be presented to the Authority in the first two months of 2014 for formal review and action. A summary of the NPV's received along with an NPV Log showing the status of each NPV is included in this report under Appendix D.
11. The Authority website continued to be improved in content and in its ease of use. An important improvement was to the incident report format and the ability to file on-line.
12. The Authority established a \$250 filing fee for filing a complaint. The filing fee is to 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.
13. 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 91 Municipalities and 4 Counties within Maryland. This is an ongoing effort that will extend well into 2014. A summary of these efforts is included in this report under Appendix F.

14. One of the most important happenings in 2012 that extended into 2013 was the receipt of a \$95,000 grant from the Pipeline and Hazardous Materials Safety Administration (U.S. Department of Transportation) to the Authority. Half of the grant funds was disbursed to the Authority in November of 2012. A mid-term report was filed on March 1, 2013, which released the balance of the funds. The 2012 Grant year ended on August 31, 2013. A final report was submitted to PHMSA on September 30, 2013 outlining all the activities of the Authority during the Grant year. A copy of that final report is included as Appendix E of this Report.
15. The Authority prepared a Grant Request for the 2014 PHMSA State Damage Prevention Grant to be submitted on December 6, 2013. However, the submission date was rescheduled for January 21, 2014. The Authority will be submitting that Grant Request then.
16. The Authority, in conjunction and participation with the MD/DC Damage Prevention Committee conducted numerous education and training sessions concerning the new Miss Utility law, 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.
17. As the Authority began hearings on NPV's it was advised by their legal team that all proceedings must occur



under the guidelines of Maryland Administrative Procedure Act (APA). The attorneys conducted a training session prior to the November 20, 2013 meeting highlighting the applicable requirements of the APA while the Authority was in hearing process. A copy of those highlighted requirements are included in Appendix G of this report. Additionally, the Authority began 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 G of this report.





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

The Authority will continue to meet publically in 2014 and will continue with its education and outreach efforts. In the fourth 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 suspension of 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 matrix of violations and related fines.



## **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.

---

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## APPENDIX C

# Outreach and Education





**Maryland Underground Facilities Damage Prevention Authority  
Maryland/DC Damage Prevention Committee  
Miss Utility  
2013 Home, Garden and Trade Shows**

Baltimore Build, Remodel and Landscape Expo  
Baltimore Convention Center  
January 18 - 20, 2013

Maryland Home and Garden Show (Spring)  
Timonium Fairgrounds  
March 2 - 3 & 8 - 10, 2013

Northern Chesapeake Modern Living Expo  
APGFCU Arena, Harford Community College  
March 22 - 24, 2013

Home Builders Association of Washington County  
Hagerstown Community College's Athletic Recreational Community Center  
March 23 - 24, 2013

Mid Atlantic Construction Safety Conference  
The Show Place Arena & Prince Georges Equestrian Center  
May 9, 2013

The Stone Store Homeowners DIY Day  
Hanover, MD  
June 15, 2013

Maryland Municipal League  
Roland Powell Convention Center, Ocean City, MD  
June 23 - 26, 2013

Forest Heights Day  
Tayac Neighborhood Park, Forest Heights, MD  
August 3, 2013

Maryland Association of Counties  
Roland Powell Convention Center, Ocean City, MD  
August 14 – 17, 2013

NIH Health, Wellness and Safety Day  
NIH Main Campus, 45 Center Drive, Bethesda, MD  
August 28, 2013

Maryland Park Service Employee Field Day  
Washington Monument State Park, Middletown, MD  
October 2, 2013

Level Volunteer Fire Company Open House  
Havre de Grace, MD  
October 6, 2013

Maryland Home and Garden Show (Fall)  
Timonium Fairgrounds  
October 18 – 20, 2013

Greater Chesapeake Damage Prevention Training Conference  
Clarion Hotel and Conference Center, Ocean City, MD  
October 23 – 25, 2013

### **2013 Minor League Baseball Sponsorship Events**

Frederick Keys, Frederick, Maryland

April 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup>, May 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup>, June 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup>

Bowie Baysox, Bowie, Maryland

August 18<sup>th</sup>



**Maryland Underground Facilities Damage Prevention Authority  
Maryland/DC Damage Prevention Committee  
Miss Utility  
2013 Damage Prevention Training & Safety Presentations**

Midasco, LLC  
7121 Dorsey Run Road, Elkridge, MD  
January 21, 2013

C. J. Miller  
451 WMC Drive, Westminster, MD  
February 8, 2013

R. W. Warner, Inc.  
217 Monroe Ave., Frederick, MD  
February 14, 2013

Calvert Co. Career/Tech Academy  
330 Dorsey Road, Prince Frederick, MD  
February 15, 2013

George Pedri  
18960 Woodfield Road, Gaithersburg, MD  
February 19, 2013

B. Frank Joy Company  
5355 Kilmer St., Hyattsville, MD  
February 21, 2013

Cecil Co School of Technology  
900 North East Road, North East, MD  
February 27, 2013

Gray and Sons, Inc.  
Hunt Valley Inn, 245 Shawan Road, Hunt Valley, MD  
February 28, 2013



Allegany County for Career & Technical Education  
14211 McMullen Highway, Cresaptown, MD  
March 4, 2013

Gray and Sons, Inc.  
Hunt Valley Inn, 245 Shawan Road, Hunt Valley, MD  
March 5, 2013

Western School of Technology  
100 Kenwood Ave, Baltimore, MD  
March 19, 2013

B. Frank Joy Company  
5355 Kilmer St., Hyattsville, MD  
March 28, 2013

Washington Co Technical School  
50 West Oak Ridge Dr., Hagerstown, MD  
April 9, 2013

Washington Co Technical School  
50 West Oak Ridge Dr., Hagerstown, MD  
April 10, 2013

Center of Applied Technology-Anne Arundel County  
800 Stevenson Rd., Severn, MD  
April 11, 2013

PSC Training Event  
Maritime Institute, Linthicum Heights, MD  
April 17, 2013

PSC Training Event  
Maritime Institute, Linthicum Heights, MD  
April 19, 2013

City of Baltimore  
200 Holliday St., Baltimore, MD  
April 19, 2013

ABC of Baltimore  
1220 East Joppa Road, Towson, MD  
April 30, 2013

Odenton Elementary School Career Day  
1290 Odenton Rd., Odenton, MD  
May 1, 2013

NPL, University of Maryland  
3501 East University Blvd., Hyattsville, MD  
May 3, 2013

Gable Signs  
7440 Fort Small Rd., Baltimore, MD  
May 8, 2013

Calvert County – Highway Maintenance  
335 Stafford Rd., Prince Frederick, MD  
May 30, 2013

Short Course – Treatment Facilities Maintenance Course  
St. Mary's College, Emmitsburg, MD  
June 4, 2013

PCM Services  
10511 Tucker St., Beltsville, MD  
June 12, 2013

ABC of Baltimore  
1220 East Joppa Road, Towson, MD  
June 21, 2013

Comer Construction  
2100 Slade Lane, Forest Hill, MD  
July 19, 2013

Howard County DPW  
8370 Old Montgomery Rd., Columbia, MD  
September 12, 2013

Decisive Communications  
5305 Jefferson Pike, Frederick, MD  
September 17, 2013

St. Mary's County  
Dr. James Forrest Career & Tech Ctr.  
24005 Point Look Rd., Leonardtown, MD  
September 30, 2013

Paradigm Training  
100 S. George St., Cumberland, MD  
October 1, 2013

Paradigm Training  
7900 Washington Blvd., Columbia, MD  
October 3, 2013

Maryland Environmental Services  
SHA Hanover Complex  
7491 Connelly Dr., Hanover, MD  
October 8m, 2013  
Note: GreenScapes, Inc. joined training as a result of NPV# 303

Paradigm Training  
13905 Central Ave., Upper Marlboro, MD  
October 9, 2013

Paradigm Training  
980 Hospitality Way, Aberdeen, MD  
October 10, 2013

PSC-NOW  
4510 North Point Blvd., Sparrows Point, MD  
October 14, 2013

Aramark-Hoods College  
604 Evergreen Ave., Frederick, MD  
October 15, 2013

Aramark-McDaniel College  
2 College Hill, Westminster, MD  
November 7, 2013

Jimmy Richards Excavating  
12200 Billingsley Rd., Waldorf, MD  
November 14, 2103

Howard County Facilities  
9520 Bendix Rd., Columbia, MD  
November 21, 2013

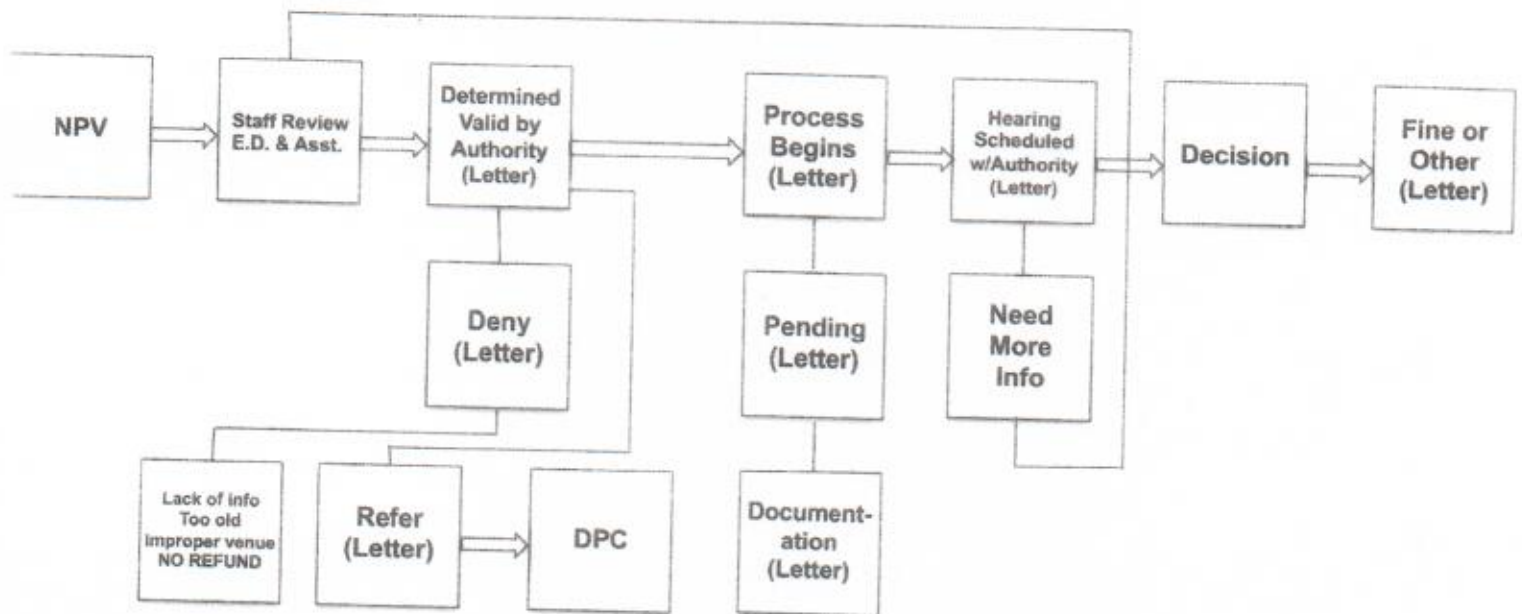




## **APPENDIX D**

# **Notice of Probable Violation Process and Summary & Breakdown of 2013 NPV's**

## NOTICE OF PROBABLE VIOLATION PROCESS





**Maryland Underground Facilities Damage Prevention Authority**  
**Notice of Probable Violation Summary**  
**January 2013 through December 2013**

45 Notices of Probable Violation (NPV) have been submitted to the Authority in 2013

29 of those NPV's have been researched and reviewed by the Authority

11 of those have gone to a hearing in front of the Authority

\$10,500 in fines have been assessed in those 11

Damage Prevention Training has been assessed in those 11

5 of those NPV's have been appealed to the Circuit Court

1 on the constitutionality of the statute

4 on the merits of the violation

18 of the NPV's that have been reviewed by the Authority are waiting for a response from the probable violator on scheduling a hearing

16 NPV's are in research and scheduled for review in January & February of 2014

13 of the NPV's received by the Authority are for a "No Call" violation

20 of the NPV's received by the Authority are for a "No Call - Clear Evidence" violation

1 of the NPV's received by the Authority is for a "Clear Evidence" violation

10 of the NPV's received by the Authority are for a "Not Marked Per Code" violation

1 of the NPV's received by the Authority is for an "Emergency Call Abuse" violation





**Maryland Underground Facilities Damage Prevention Authority**  
**Notice of Probable Violation Log**  
**January 2013 through December 2013**

	No	Received	Reviewed	Probable Violation	Hearing	Fines	Training	Status	Comments
1	233	1/15/13	5/1/13	Not Marked per Code	None	None	None	Closed	No violation could be determined
2	241	1/17/13	5/1/13	No Call	None	None	None	Closed	No violator could be determined
3	282	2/12/13	6/5/13	Clear Evidence	7/10/13	\$500	Yes	Open	Training not yet completed
4	283	2/12/13	6/5/13	No Call - Clear Evidence	9/11/13	\$3,000	Yes	Appealed	Going to Circuit Court on Constitutionality
5	284	2/12/13	7/10/13	No Call - Clear Evidence	9/11/13	\$2,000	Yes	Open	Training not yet completed
6	285	2/12/13	10/16/13	No Call - Clear Evidence	Open	Open	Open	Open	No Response yet from Probable Violator
7	292	2/13/13	10/16/13	No Call - Clear Evidence	11/20/13	None	None	Close	Probable Violator Cleared of Probable Violation
8	303	2/19/13	6/5/13	No Call	7/10/13	\$2,000	Yes	Closed	Fines Paid & Training Completed
9	308	2/20/13	6/5/13	Not Marked per Code	None	None	None	Closed	No violation could be determined
10	316a	2/25/13	5/1/13	Not Marked per Code	7/10/13	\$1,000	Yes	Appealed	Going to Circuit Court on Appeal of Violation
12	316b	2/25/13	5/1/13	Not Marked per Code	7/10/13	\$1,000	Yes	Appealed	Going to Circuit Court on Appeal of Violation
13	326	2/27/13	5/1/13	Not Marked per Code	None	None	None	Closed	Complainant Withdrew Complaint - No Violation
14	408	4/2/13	5/1/13	Not Marked per Code	7/10/13	None	None	Closed	No Violation - Extenuating Circumstances
15	411a	4/3/13	5/1/13	Not Marked per Code	7/10/13	\$500	Yes	Appealed	Going to Circuit Court on Appeal of Violation
16	411b	4/3/13	5/1/13	Not Marked per Code	7/10/13	\$500	Yes	Appealed	Going to Circuit Court on Appeal of Violation
17	411c	4/3/13	5/1/13	Not Marked per Code	7/10/13	None	None	Closed	No violation could be determined
18	446	4/15/13	7/10/13	No Call	None	None	None	Closed	No violation could be determined
19	545	5/15/13	9/11/13	No Call	None	None	None	Closed	No violation could be determined
18	575	5/16/13	9/11/13	No Call	None	None	None	Closed	No violation could be determined
20	576	5/24/13	9/11/13	No Call - Clear Evidence	Open	Open	Open	Open	No violation could be determined
21	577	5/24/13	10/16/13	No Call	Open	Open	Open	Open	No Response yet from Probable Violator
22	578	5/29/13	9/11/13	No Call	Open	Open	Open	Open	Hearing Scheduled for 1/8/14
23	579	6/19/13	10/16/13	No Call	Open	Open	Open	Open	No Response yet from Probable Violator
24	675	6/5/13	11/20/13	No Call - Clear Evidence	Open	Open	Open	Open	Hearing Scheduled for 1/8/14
25	892	7/17/13	11/20/13	No Call - Clear Evidence	Open	Open	Open	Open	No Response yet from Probable Violator
26	1005	8/16/13	11/20/13	No Call - Clear Evidence	Open	Open	Open	Open	No Response yet from Probable Violator

27	1089	9/4/13	11/20/13	No Call - Clear Evidence	Open	Open	Open	Open	No Response yet from Probable Violator
28	1188	10/7/13	11/20/13	No Call - Clear Evidence	Open	Open	Open	Open	No Response yet from Probable Violator
29	1196	10/10/13	11/20/13	No Call - Clear Evidence	Open	Open	Open	Open	No Response yet from Probable Violator
30	1198	10/10/13		No Call - Clear Evidence					In Research - Scheduled for Review 1/8/14
31	1199	10/10/13		No Call - Clear Evidence					In Research - Scheduled for Review 1/8/14
32	1216	10/14/13		No Call - Clear Evidence					In Research - Scheduled for Review 1/8/14
33	1249	10/23/13		Not Marked per Code					In Research - Scheduled for Review 1/8/14
34	1304	11/4/13		No Call					In Research - Scheduled for Review 1/8/14
35	1310	11/5/13		No Call					In Research - Scheduled for Review 1/8/14
36	1311	11/5/13		No Call					In Research - Scheduled for Review 1/8/14
37	1318	11/6/13		No Call - Clear Evidence					In Research - Scheduled for Review 1/8/14
38	1319	11/6/13		No Call - Clear Evidence					In Research - Scheduled for Review 1/8/14
39	1320	11/6/13		No Call - Clear Evidence					In Research - Scheduled for Review 1/8/14
40	1322	11/6/13		No Call - Clear Evidence					In Research - Scheduled for Review 1/8/14
41	1323	11/6/13		No Call - Clear Evidence					In Research - Scheduled for Review 1/8/14
42	1336	11/8/13		No Call					In Research - Scheduled for Review 1/8/14
43	1413	11/27/13		Emergency Call Abuse					In Research - Scheduled for Review 2/5/14
44	1446	12/5/13		No Call - Clear Evidence					In Research - Scheduled for Review 2/5/14
45	1449	12/5/13		No Call - Clear Evidence					In Research - Scheduled for Review 2/5/14



## **APPENDIX E**

# **2012 PHMSA State Damage Prevention Grant Final Report**





**Maryland Underground Facilities  
Damage Prevention Authority**

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

R. Thomas Hoff, Sr.  
*Chairman*

Kevin Woolbright  
*Vice Chairman*

Cynthia Flanders  
*Treasurer*

Thomas C. Baldwin  
Arthur I. Bell III  
Bernard W. Cochran  
Marcia M. Collins  
Walter F. Gainer  
Walter W. Gilmer

James Barron  
*Executive Director*

Laura Olander  
*Office Associate*

Bruce C. Bereano  
*Staff*

[info@mddpa.org](mailto:info@mddpa.org)  
[www.mddpa.org](http://www.mddpa.org)

September 30, 2013

U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
Office of Acquisition Services, PHA-30  
1200 New Jersey Avenue, SE, E22-306  
Washington, DC 20590

Attn: Ms. Janella Davis

Re: 2012 State Damage Prevention Program  
Grants Final Report  
CFDA Number: 20.720  
Award Number: DTPH56-12-G-PHPS09

Dear Janella:

Please find enclosed the following documents:

1. 2012 Final Grant Completed Form
2. 2013 Final Grant Federal Financial Report SF-425
3. Attachment to Federal Financial Report SF-425
4. Backup to support detail shown on the attachment

If there is any additional information or detail needed, please feel free to contact me at your convenience.

Sincerely,

James A. Barron  
Executive Director  
Maryland Underground Facilities Damage Prevention Authority

**2012 State Damage Prevention Program Grants Final Report**  
**CFDA Number: 20.720**

**Award Number:** DTPH56-12-G-PHPS09

**Project Title:** MD Underground Facilities Damage Prevention Authority State Damage Prevention

**Date Submitted:** September 30, 2013

**Submitted by:** James A. Barron

**Specific Objective(s) of the Agreement**

Under this grant agreement, the MD Underground Facilities Damage Prevention Authority will:

- Laws and regulations of the damage prevention process

**Workscope**

Under the terms of this grant agreement, the Grantee will address the following elements listed in 49 USC§60134 through the actions it has specified in its Application.

- *Element (7):* Enforcement of State damage prevention laws and regulations for all aspects of the damage prevention process, including public education and the use of civil penalties for violations assessable by the appropriate State authority.

**Accomplishments for the grant period (Item 1 under Agreement Article IX, Section 9.02 Final Report: "A comparison of actual accomplishments to the objectives established for the period.")**

As noted above our primary objective is enforcement as detailed in *Element (7)* of 49 USC§60134. Now that the website is established; an office, equipment and staff is in place and functional; we have begun to initiate and deliver on-line enforcement capability and implement a complaint review process along with hearing procedures and processes. To date, the Maryland Underground Facilities Damage Prevention Authority ("The Authority") has received twenty-seven (27) Notices of Probable Violation (NPV) on The Authority Website. The status of those twenty-seven (27) is noted below.

Eight (8) of the twenty-seven (27) have been reviewed and closed for various reasons:

- In two (2) of the eight (8), the complainant could not accurately establish an actual violation of the law and The Authority's research supported that position.
- In five (5) of the eight (8), the complainant could not accurately identify the probable violator and our research supported that position.
- In one (1) of the eight (8), the complainant withdrew the NPV stating they had made a mistake. We still researched the NPV and found that a violation of the law did not occur.



Nine (9) of twenty-seven (27) went to a hearing before The Authority. Below are the results of those nine (9):

- In one (1) of the nine (9), since no damage occurred, the recommended fines were waived but the probable violator was required to complete damage prevention training through the Maryland/DC Damage Prevention Committee. The Authority ruled that extenuating circumstances prevented the probable violator from working within the strict confines of the law.
- In another one (1) of the nine (9) the recommended fines were waived but the probable violator was required to complete damage prevention training through the Maryland/DC Damage Prevention Committee. The original NPV stated that the probable violator (1) had not called the One Call Center for a ticket and (2) had proceeded with his excavation with "Clear Evidence" of unmarked facilities in the area of the excavation. Through our research, a valid One Call Center Ticket did exist for the probable violator, which negated the first claim of violation. However, there was "Clear Evidence" of marked facilities in the area. Since the probable violator had, prior to the hearing, contacted the facility owner to arrange for training, The Authority ruled to waive the fine in lieu of that training. Furthermore, the probable violator was required to complete additional damage prevention training through the Maryland/DC Damage Prevention Committee.
- The remaining seven (7) of the nine (9) have resulted in a total of \$11,000 in fines being levied along with mandatory damage prevention training through the Maryland/DC Damage Prevention Committee.
  - Four (4) of those seven (7) have been appealed to the Circuit Court. Subtitle 12-113(e) of the Maryland Statue states "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."
  - The remaining three (3) of those seven (7) are in the process of having fines paid and damage prevention training completed.

Four (4) of the twenty-seven (27) are scheduled for review and decision at the September 11, 2013 meeting of The Authority.

The remaining six (6) of the twenty-seven (27) are still in review and research but are expected to go to review and decision in the October 16, 2013 meeting of The Authority with hearings on the respective NPV's before the end of 2013.

The Authority is also working with two (2) One Call non-member companies, one (1) One Call non-member Maryland County and one (1) One Call non-member municipality to get them up and running on the designated Maryland One Call System. In addition, The Authority is working closing with the Maryland Association of Counties (MACo) and the



Maryland Municipal League (MML) to identify any of their members who are not members of the designated Maryland One Call System. Then, those associations and The Authority will jointly work with the association members to get them up and running on the designated Maryland One Call System.

The Authority has begun to develop training and outreach programs and material to educate all stakeholders of the existence of The Authority and its mission. Through trade show attendance the message is, in its infancy, getting out to the stakeholders. Specifically, we have attended and had a booth at the summer conventions of MACo and MML. We will also have a booth at the Greater Chesapeake Damage Prevention Convention where we will also be presenting a one (1) hour seminar on "The Authority, Who It Is and What Does It Do".

The Authority office receives numerous phone calls on a wide range of subjects. Most of the calls concern interpretations of the law and how the law applies to their specific situation. We follow up on all calls, however, because we only have one employee doing investigations we cannot accept NPV's by phone, although, if the individual does not have Internet access we will complete their NPV for them over the phone and begin the investigation. It is our intent in the future to add staff to actually go into the field to follow up on complaints received both over the Internet and the phone. Budget constraints don't allow for that level of investigation at this time.

As The Authority began to receive multiple NPV's we realized software would have to be developed to log, track, present, act upon and close NPV's. Fortunately, we were able to avoid the very large expense of developing our own software by securing a copy of the software used in the State of Virginia. The only costs we will now incur are to tailor that software to Maryland and provide support for it in the future.

Up to this point, the Public Member of the Authority, free of charge to The Authority, was handling all accounting for The Authority. Since The Authority office is housed in the designated Maryland One Call Center which is owned and operated by One Call Concepts, Inc. we are in the process of moving all financial matters to the accounting department of One Call Concepts, Inc. to (1) remove that duty from the Public Member of The Authority whose term expires on September 30, 2013 and (2) to house total oversight of financial issues to one established accounting entity.

In late July 2013, The Authority advertised for proposals to research and develop an extensive marketing and outreach program. A vendor has been identified for the project. We are now in the process of trying to find adequate funding to initial that project.

**Quantifiable Metrics/Measures of Effectiveness (Item 2 under Article IX, Section 9.01 Project Report: "Where the output of the project can be quantified, a computation of the cost per unit of output.")**

The Authority recognizes the need to establish a baseline from which the success of The Authority efforts can be measured quantifiably. Since the focus of our efforts during this grant year was dedicated to getting The Authority up and running and since we are currently restricted



by budgetary issues, no measurable effort has been established in this area. However, in July of 2013 The Authority sent an RFP to multiple firms that have exhibited a history of developing outreach awareness programs along with promotional and educational material in the damage prevention arena. The firm selected has proposed a detailed approach, methodology and programs along with recommended educational and training materials that will position the Maryland Underground Facilities Damage Prevention Authority as a partner and leader in damage prevention in the State of Maryland. Part of that effort will be to establish a baseline and program to measure progress of short and long term goals against that standard. Our legislative intent is "...to protect underground facilities..." in Maryland "...from destruction, damage or dislocation..." and to prevent possible "...death or injury to individuals; property damage to private and public property; and the loss of services provided to the general public." The program suggested by the firm selected will help the Maryland Underground Facilities Damage Prevention Authority achieve its legislative intent. We have already engaged the firm selected to begin to prepare preliminary educational and training materials to be rolled out at the Greater Chesapeake Damage Prevention Convention in October 2013.

**Issues, Problems or Challenges (Item 3 under Article IX, Section 9.01 Project Report: "The reasons for slippage if established objectives were not met. ")**

As The Authority moved through the second half of the Grant Year and more NPV's were being submitted and as we began to move into the review, hearing and decision phases of an NPV, several older problems continued to need attention as well as several new problems surfaced.

As more and more NPV's were submitted we had to continually update the NPV submission form on the Website. Asking the proper questions in order to receive the most accurate information during the initial submission phase enhances the ease and success of the investigation process on an NPV. Additionally, The Authority has waived the \$250 filing fee until the end of 2013 and, because it appears to be a deterrent in the NPV submission process, it is likely The Authority will waive the fee indefinitely.

The original intent in the establishment of a review and hearing process of Notices of Probable Violation (NPV) was to receive the NPV electronically, research the NPV through multiple modes of investigation, notify the probable violator of a probable violation and their right to a hearing on the NPV, hold the hearing in front of The Authority and then finally rule on the NPV and establish a decision that could result in possible fines and/or training in damage prevention, all to be completed through a very informal process. As The Authority moved into the Hearing phase of an NPV, some probable violators requested to be represented in their hearing by an attorney. Initially The Authority balked on this request, however, through further examination by The Authority legal advisors, it was determined that all hearings conducted by The Authority came under the guidelines of the Maryland Administrative Procedures Act ("APA"). This required The Authority to conduct their hearings in a more formal manner similar to those held in front of Administrative Judges, however, since all testimony comes under oath attorneys can only represent probable violators at the hearings and representatives of the probable violator still have to attend the hearing to present evidence and testimony or face the possibility of failing "...to appear for the scheduled hearing may result in an adverse action against..." the probable violator.

With the arrival of attorneys into our hearing process, we have now had to deal with attorneys who want to argue the constitutionality of The Authority and its powers along with arguments that

conflicts of interest exist between probable violators and appointed members of The Authority. Under APA guidelines, a failure to appear for the scheduled hearing may result in an adverse action against the probable violator.

Obviously, these two issues are not matters to be addressed in our hearing venue but rather at the circuit or appellate court level. The Authority has been gracious in allowing attorneys to briefly discuss these issues in their opening statements but have not allowed these concerns to affect decisions on NPVs. Of course these issues will play out over time and will help define the limits of The Authority and, possibly, dictate whether the Maryland Statute will have to be revisited in future legislative sessions.

#### **Final Financial Status Report**

The Final Federal Financial Report (Standard Form SF-425) is attached hereto. A breakdown of line (c.) is shown below. Documentation such as invoices, receipts, spreadsheets, etc. will be forwarded to the GA and GOTR within a week of this September 30, 2013 submission.

	Budget	Total	(Over)/ Under
Personal	0.00	0.00	0.00
Fringe Benefits	0.00	0.00	0.00
Travel	2,600.00	3,816.68	(1,216.68)
Equipment	0.00	0.00	0.00
Supplies	19,500.00	19,583.63	(83.63)
Contractual	59,900.00	54,396.63	5,503.37
Indirect Charges	13,000.00	12,950.00	50.00
Non-Grant Expenses	0.00	1,641.86	(1,641.86)
Total	95,000.00	92,388.80	2,611.20

#### **Requests of the GOTR and/or PHMSA**

No actions requested at this time.





## APPENDIX F

# **Summary of Maryland Municipal and County Miss Utility Membership Efforts**



**Maryland Underground Facilities Damage Prevention Authority**  
**Non-Member Violation Summary**  
**January 2013 through December 2103**

91 letters sent to Municipalities in Maryland there are not members of One Call

1 of those was already a member of One Call

30 of those have been mailed a contract

6 of those are working with Dora on a Service Agreement

2 of those need follow up after the initial contact with Dora

27 of those may be exempt

33 have not responded to our initial letter

4 letters sent to Counties in Maryland that are not members of One Call

Allegany & Talbot are signing up

Wicomico and Worcester have not responded

Antietam Cable contacted by the Authority and is signing up with One Call

They have a contract but have not finished the process

Being handed over to the Attorney

Norfolk Southern contacted by the Authority and is ignoring us at this point

They have ignored our letters

Bruce Bereano has contacted their lobbyist

Being handed over to the Attorney



## APPENDIX G

# **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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410-782-2102

**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.

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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.





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**Operating Practices  
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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.



BEFORE THE MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY  
STATE OF MARYLAND, ANNE ARUNDEL COUNTY TO WIT:

**SUBPOENA**

In the Matter of \_\_\_\_\_

NPV Number \_\_\_\_\_

**TO:**

PURSUANT TO SECTION 12-113 OF THE PUBLIC UTILITIES ARTICLE, YOU ARE HEREBY COMMANDED TO PERSONALLY APPEAR TO GIVE TESTIMONY IN THE ABOVE NPV NUMBER:

\_\_\_\_\_

at a hearing before the Authority located at 7223 Parkway Drive, Hanover, Howard County, Maryland 21076.

on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ at \_\_\_\_\_ A.M./P.M.

Subpoena requested by \_\_\_\_\_; and any questions should be referred to: \_\_\_\_\_

Date Issued \_\_\_\_\_



Chairman of Maryland Underground  
Facilities Damage Prevention Authority  
7223 Parkway Drive  
Hanover, Maryland 21076

**NOTICE:**

- (1) YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA.
- (2) This subpoena shall remain in effect until you are granted leave to depart by the Authority or by an officer acting on behalf of the Authority.

**SHERIFF'S RETURN**

( ) – Served and copy delivered on date indicated below.

( ) – Unserved, by reason of \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
SHERIFF

STAPLES

**copy&print**

## quality checklist

Any size job, done right and on time.

1/26/2014

Staples Store #1279

7661 Arundel Mills Blvd.

Hanover, MD 21076

Phone # 4107994828

Dear Laura,

Thank you for your continued business. When it comes to 100% quality, every detail counts. That's why we have created this **quality checklist** specifically for your order #2036397518.

### Copy/Print

- ☒ Compared sample set to originals and instructions
- ☒ Graphics are sharp and font is correct and text is crisp
- ☒ All images and text are straight and not cut off
- ☒ No spots, streaks or smudges
- ☒ Correct paper type, color & size

### Color

- ☒ Images are crisp and not pixelated
- ☒ Colors are accurate and consistent

### Binding

- ☒ No skewing or crooked folds
- ☒ Stapling and placement correct
- ☒ Proper hole alignment without interfering images and spaced evenly from end to end
- ☒ Correct bind type, color and size
- ☒ Bind is even along edge, on correct side, adhesive is holding
- ☒ Order was free of dust and binding debris

Quality checked by:   *LB*