



## Eleventh Annual Report

MSRA# 8340

*2022*

MARYLAND UNDERGROUND FACILITIES  
DAMAGE PREVENTION AUTHORITY

2021 State Damage  
Prevention Program  
Review





**Maryland Underground Facilities  
Damage Prevention Authority**

7223 Parkway Drive, Suite 100  
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(410) 782-2102

February 2022

Michael I. Jewell – Columbia Gas  
*Facility Owner Representative*  
**Chairman**

Paul Kwiatkowski - Howard County  
*MACo Representative*  
**Vice-Chairman**

Tamara Neal - Washington Gas  
*Facility Owner Representative*  
**Treasurer**

Kellyn H. Ruddo - OCC Inc. *One*  
*Call Center Representative*  
**Secretary**

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*Members*

Amber Brengel  
Beltsville Construction Supply  
*Contractor Representative -*  
**PWCA**

James Dudley  
**Public Member**

David Gaines  
Gaines & Company, Inc. *Contractor*  
**Representative - AUC**

Jimmy Jennings  
One Call Locating Services  
**Contract Locator Representative**

Derek Shreves  
Town of Sykesville  
**MML Representative**

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James A. Barron *Executive*  
*Director*  
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Susan A. M. Stroud *Deputy*  
*Director*  
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The Honorable Larry Hogan  
State House  
100 State Circle  
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The Honorable William Ferguson  
President  
Senate of Maryland  
State House, H-107  
Annapolis, Maryland 21401

The Honorable Adrienne A. Jones  
Speaker  
Maryland House of Delegates  
State House, H-101  
Annapolis, Maryland 21401

Re: Report Required by Public Utilities Article  
§12-144 (MSAR# 8340)

Ladies and Gentlemen:

As the 2022 Chair of the Maryland Underground Facilities  
Damage Prevention Authority, I submit this Eleventh Annual  
Report to you. This document serves as an outline of the  
Authority's activities and accomplishments for the 2021 calendar  
year.

Michael I. Jewell  
Chairman

cc: Sarah Albert, Department of Legislative Services

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## 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 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.*

## The Miss Utility Statute – Brief History<sup>1</sup>

In 1990, the General Assembly enacted the Miss Utility Statute, Md. Code (1957, 1991 Repl. Vol.), Section 28A(a) of Article 78. Its aim was to protect the public from death or injury caused by damage to underground public utility structures, including sewer, gas, oil, and water lines, and to prevent damage to those underground facilities during construction projects. It “required that all owners of underground facilities in the state—i.e., public utilities, telecommunications corporations, cable television corporations, political subdivisions, municipal corporations, steam heating companies, and authorities—become ‘owner-members’ of a ‘one-call’ system.” *Reliable Contracting Co., Inc. v. Md. Underground Facilities Damage Prevention Auth.*, 222 Md. App. 683, 686, cert. granted, 444 Md. 638 (2015).<sup>1</sup> If a contractor planned to perform any excavation or demolition work in the State, the contractor was required to notify the one-call system and could not begin excavation or demolition until it received notification that all underground facilities in the vicinity had been marked or that no underground facilities were in the vicinity of the site. *Id.*

In 2006, Congress enacted the Pipeline Inspection, Protection, Enforcement, and Safety Act, 49 U.S.C. § 60134 (“the PIPES Act”). That act authorized the federal Department of Transportation to allocate grants to a “State authority” to improve underground facilities damage prevention programs. 49 U.S.C. § 60134(a). Only State authorities having the power to assess civil penalties for violations of State law governing underground facilities were qualified for federal grants. See 49 U.S.C. § 60134(b)(6), (7).

In 2010, the General Assembly revised the Miss Utility Statute, consistent with the PIPES Act, to create the Authority. As relevant here, the Authority is empowered to adopt bylaws; maintain facilities for the purposes of holding hearings; employ a staff; and “do all things necessary or convenient to carry out the powers expressly granted by this subtitle.” PU § 12-110(a). It is comprised of nine members, all of whom are appointed by the Governor to staggered two-year terms. PU § 12-107.

With the exception of one <sup>1</sup> In *Reliable Contracting*, this Court rejected a challenge to the constitutionality of the provisions of the Miss Utility Statute empowering the Authority to adjudicate complaints and assess civil penalties.

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<sup>1</sup> *UNREPORTED -IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND -No. 2079  
SEPTEMBER TERM, 2014  
WASHINGTON SUBURBAN SANITARY COMMISSION ET AL.*

v.  
*MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY  
Eyler, Deborah, S., Nazarian, Sharer, Frederick J. (Retired, Specially Assigned), JJ.  
Opinion by Eyler, Deborah, S., J.  
Filed: October 22, 2015*

*\*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.*



# 2021 Accomplishments



## Maryland Authority 2021 Accomplishments

- **Statutory Requirements** - The Authority met nine (9) times during the 2021 calendar year. All nine (9) meetings were conducted via Zoom. The Authority reviewed sixty-two (62) probable violations during this period. Of those NPV's, nine (9) cases were carried over from 2020. The remaining fifty-three (53) violations were received, reviewed, and acted upon in 2021. Two (2) NPV's were dismissed for insufficient evidence and six (6) NPV's were withdrawn by the complainant.
  
- **Breakdown of 2021 Offenses** - The breakdown of the types of offenses is an important tool the Authority uses in order to address where deficiencies in training may occur.
  - **Locating Violations** – In 2021 there were thirty-nine (39) marking violations, which in each case was due to the failure of the contract locator to mark the underground facilities within the required two (2) business days.
  - **No Miss Utility Ticket** - In addition, there were seventeen (17) instances reported, where the violator had not obtained a valid ticket for the work they intended to do. These NPV's were all 1<sup>st</sup> time offenses, which will require Damage Prevention training. One (1) company was cited for their fourth (4th) “No Ticket” offense.
  - **Failure to Test Pit** – There were two (2) instances of excavation near underground facilities without “Test Pitting”, which is required in order to verify that the location marks are correct by finding the utility.

- **Abuse of Emergency Tickets** - One (1) company was cited for the “Abuse of an Emergency” ticket. These types of offenses occur when contractors attempt to get their marks ahead of the regulated waiting times by declaring the work is for emergency purposes. These abuses seriously impact a locator’s ability to respond to real emergencies, such as a large water or sewer main rupture.
- **Failure to Report Clear Evidence** - There was one (1) instance of failure to heed “Clear Evidence”, meaning that the contractor proceeded to dig when it was obvious that there were utilities in the area of disturbance. The law requires a person to notify the one-call system that clear evidence has been observed, even if their ticket indicated there were no utilities in the area, they proposed to do the digging.
- **Expired Ticket** - And lastly, there was an NPV filed against a company for allowing work to continue once their ticket had expired. Tickets must be renewed if the project goes beyond the twelve (12) day life of the ticket.
- **Civil Penalties** - The total fines assessed in 2021 were \$69,838.00. The Authority also recommended Title XII Damage Prevention Safety training to all companies in violation of the statute or required written policy statements in order to mitigate internal shortfalls to their damage prevention programs (the Authority provides Damage Prevention Training via the MD/DC DPC at no charge to the violator).  
In calendar year 2021, the Authority collected \$20,226.00 in fines and spent \$26,587.84 on Education and Outreach Initiatives.

- **MD is a Low Damage State** - Despite an uptick nationwide in underground facility damages, and a dynamic increase in ticket volumes, Maryland remains a state with the lowest “hit rates” in the nation. The Authority attributes this statistic to a very successful Education and Outreach program.
- **Education and Outreach** - The Authority’s main focus continues to be Education and Outreach. Since the advent of the Covid-19 pandemic, like many other institutions, the Authority has become more dependent on internet communications and other digital opportunities. We accomplished the first part of our goal in August of 2020, when we officially launched our new website. The launch date was August 11th, which is nationally and locally recognized as Call 811 day (811 day).
- **New Authority Website** - This past year has been spent finetuning the new web site with many new features and resources for the general public, construction companies, underground facility owners etc. The Authority website is heavily used, and its imbedded videos receive a lot of viewing time. Since the launch, [www.mddpa.org](http://www.mddpa.org) has received an astonishing number of views, which last at least 3 minutes. By industry standards, this duration of viewing is considered very successful.
- **Mobile Apps** - The Authority has also launched two (2) Mobile Apps for use on the Apple and Android platforms. The Apps mirror the website’s branding and offer a wide range of resources that can be helpful in the field, such as a quick resource for referencing the Title XII – “Miss Utility” law, the ability to file complaints, pay fines and access to hot links to all twenty-four (24) County Public Works Departments and much more.

- **Federal Oversight** - The Authority is overseen by the U.S. Department of Transportation's office of Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Rules governing the state-based compliance programs (Rule 9), known as State Damage Prevention Programs, of which the Maryland Authority is one.
- **Annual PHMSA Audit** - PHMSA conducts an annual review or audit in all 50 states and the territories to see if enforcement of the federal rules are being applied; properly, equitably and effectively. The Authority was evaluated for the fifth (5) time since the audits began. This year's audit was for C/Y 2020 in 2021 (the feds evaluations run one year behind real time). The goal of the review was to determine whether the Maryland Damage Prevention Program is "Adequate" (federal government terminology). Once again, the Authority was deemed "Adequate", receiving a score of 252 out of 258 points.
- **How the Authority is Funded** - The Authority is an independent, quasi-governmental agency of the Executive Branch. It does not receive any taxpayer funding. Funding for the Authority come from grants from the underground facility owners in Maryland, the federal government and filing fees. In addition, the Authority receives five (5) cents for every outgoing ticket from the One- Call system. This year, the Authority has received \$272,850.65 (Up to November 2021) which is a \$64,688.32 increase of over the previous period.

- **How Fines are Spent** - The Education and Outreach Fund, which receives its funding from the fines collected from violators of the Miss Utility law. It is a restricted fund, which can only be used for the stated goal in §12-117. These funds allow the Authority to train violators and construction companies who use the program as part of their damage prevention efforts. The Authority is also able to participate in activities such as the Maryland Municipal League and the Maryland Association of Counties summer conferences; and attend the Common Ground Alliance (CGA) Annual meetings.
- **Authority Outreach** - The CGA is a national organization formed in partnership with PHMSA and underground facility stakeholders. The CGA’s national meetings provide a unique opportunity to interact with stakeholders from around the country, hear about new industry trends, technology and emerging damage issues. The Authority is also able to contribute to regional radio campaigns during Maryland’s Safe Digging Month (April). These PSA’s highlight the importance of calling “Miss Utility” (811) before digging or disturbing the earth and the demolishing of old buildings. These spots are also produced in Spanish and aired on traditional Latin radio stations. In addition, the Authority provides materials for Damage Prevention training and other awareness activities.
- **Title XII Re-write** - The overhaul of the “Miss Utility” – Title XII statute was completed in 2020 with the passage of SB 877 (Sen. Feldman, D- Montgomery County – Dist. 15). However, following passage, SB877 was vetoed by Governor over fiscal concerns. At the beginning of the 2021 legislative session, an over-ride of the Governor’s veto of SB 877 was mounted and successfully achieved. The new version of Title XII, the “Miss Utility” law went into effect in March of 2021.

Authority was poised to launch an education campaign in person, when possible, and on-line due to Covid-19 in order to educate the underground facilities community on the pertinent changes to the law. Comparison documents were created for easy reference, which were easily accessed on the Authority website [www.mddpa.org](http://www.mddpa.org)

- **Legislative Tweaks** - As is often the case, certain tweaks were needed too the new law for either substantive reasons, drafting errors or inadvertent omissions. The Authority developed legislation for the 2022 legislative session to address these matters. HB 350, sponsored by Delegate Brooks, a member of the House Economic Matters Committee and SB 464, sponsored by Senators Feldman and Hershey of the Senate Judiciary Committee, were both introduced as “Emergency Bills” so that the errors and oversights can go into effect as soon as possible. (See HB 350 & SB 464 Fiscal note attached).
- **Partnerships** - The Authority was also asked to develop legislation by the Maryland Subscribers Committee (facility owners) for the purpose of alleviating some of the pressures that have arisen due to the pandemic and record ticket volumes. The locating industry in Maryland and across the nation have experienced difficulties keeping up with locate demands. The Authority is hopeful that this legislation sponsored by Senator Feldman, (in drafting) will help to address these issues. (see 2lr2275/ F2ls2274 attached)



# Legislative Initiatives



# HOUSE BILL 350

C5

EMERGENCY BILL

2lr1393  
CF 2lr1396

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By: **Delegate Brooks**  
Introduced and read first time: January 19, 2022  
Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Underground Facilities Damage Prevention – Enforcement**

3 FOR the purpose of authorizing the Maryland Underground Facilities Damage Prevention  
4 Authority to impose certain enforcement measures on persons that perform  
5 excavation or demolition without providing required notice; and generally relating  
6 to underground facilities and damage prevention.

7 BY repealing and reenacting, with amendments,  
8 Article – Public Utilities  
9 Section 12–135(a)  
0 Annotated Code of Maryland  
1 (2020 Replacement Volume and 2021 Supplement)

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

4 **Article – Public Utilities**

5 12–135.

6 (a) (1) A person that performs an excavation or demolition without first  
7 providing the notice required under § 12–124(a) of this subtitle is deemed negligent and is  
8 subject to a civil penalty assessed by the Authority.

9 (2) The Authority shall calculate the civil penalty considering:

- 0 (i) the severity of the violation;
- 1 (ii) the intent and good faith of the violator; and
- 2 (iii) the past history of violations.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



1 (3) The civil penalty may not exceed:

- 2 (i) \$2,000 for the first offense; and  
 3 (ii) \$4,000 for each subsequent offense.

4 (4) A person that violates any other provision of Part IV of this subtitle is  
 5 subject to a civil penalty assessed by the Authority not exceeding:

- 6 (i) \$2,000 for the first offense; and  
 7 (ii) \$4,000 for each subsequent offense.

8 (5) **INSTEAD OF OR IN ADDITION TO ASSESSING A CIVIL PENALTY**  
 9 **UNDER THIS SUBSECTION, THE AUTHORITY MAY:**

10 (I) **REQUIRE THAT A PERSON:**

- 11 1. **PARTICIPATE IN DAMAGE PREVENTION TRAINING; OR**  
 12 2. **IMPLEMENT PROCEDURES TO MITIGATE THE**  
 13 **LIKELIHOOD OF DAMAGE TO UNDERGROUND FACILITIES; OR**

14 (II) **IMPOSE OTHER SIMILAR MEASURES.**

15 [(5)] (6) (i) For purposes of paragraphs (3)(ii) and (4)(ii) of this  
 16 subsection, the Authority may not consider an offense to be a subsequent offense if the  
 17 offense occurred at least 3 years after the earlier offense unless:

- 18 1. the earlier offense is unresolved, regardless of the age of  
 19 the earlier offense; or  
 20 2. the person has not met the conditions of an assessed  
 21 penalty within the time period prescribed.

22 (ii) In the case of an unresolved earlier offense or a failure to meet  
 23 the conditions under subparagraph (i) of this paragraph, the Authority may assess up to  
 24 double the maximum civil penalty for each violation.

25 [(6)] (7) A person that fails to appear before the Authority without cause,  
 26 after proper notification of a scheduled hearing, may be subject to a \$200 fine in addition  
 27 to any civil penalty assessed by the Authority.

28 [(7)] (8) A person that files an emergency ticket that does not meet the  
 29 definition of emergency under § 12-101 of this subtitle may be subject to the maximum

1 penalties available under this subsection.

2       SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
3 measure, is necessary for the immediate preservation of the public health or safety, has  
4 been passed by a yea and nay vote supported by three-fifths of all the members elected to  
5 each of the two Houses of the General Assembly, and shall take effect from the date it is  
6 enacted.

Department of Legislative Services  
Maryland General Assembly  
2022 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 464  
Finance

(Senators Feldman and Hershey)

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**Underground Facilities Damage Prevention - Enforcement**

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This emergency bill authorizes the Maryland Underground Facilities Damage Prevention Authority to impose additional punitive measures when a person fails to notify the one-call system before performing excavation or demolition in the State or violates any other requirement related to excavation and demolition. Specifically, instead of or in addition to assessing a civil penalty pursuant to current law, the authority may (1) require a person to participate in damage prevention training or implement procedures to mitigate the likelihood of damage to underground facilities or (2) impose other similar measures.

---

**Fiscal Summary**

**State Effect:** The bill can be implemented using existing budgeted resources. Revenues are not anticipated to be materially affected.

**Local Effect:** The bill does not directly affect local government operations or finances.

**Small Business Effect:** Minimal.

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**Analysis**

**Current Law:** To protect underground facilities, such as natural gas, telephone, cable, television, water, and sewer lines, Chapter 635 of 2010 established the Maryland Underground Facilities Damage Prevention Authority. The authority hears complaints and assesses civil penalties for violations of the laws protecting underground facilities. The authority is largely funded through a 5-cent fee on marking tickets, paid by owner-members such as the State and local governments and utilities.

Chapter 18 of 2021 made various changes to the authority, its composition and powers, and the processes for the ongoing protection of underground facilities. Among other things, Chapter 18 repealed the punitive authority reinstated by the bill, specified the fees the authority may collect, clarified the authority's process for handling complaints, and modified the authority's process for calculating civil penalties.

#### *One-call System and Penalties*

Persons planning an excavation or demolition project must notify the owners of nearby facilities so that the locations can be clearly marked. Notification is accomplished through the one-call system. The one-call system currently operating in Maryland is Miss Utility. Miss Utility operates call centers that coordinate the marking of underground facilities for Delaware, the District of Columbia, and Maryland.

A person who performs an excavation or demolition is generally required to first initiate a ticket request by notifying the one-call system serving the geographic area where the work is to be performed. A person who fails to do so is deemed negligent and subject to a civil penalty assessed by the authority. To calculate the civil penalty, the authority must consider the severity of the violation, the intent and good faith of the violator, and the past history of violations. The civil penalty for a violation of this requirement, or any other requirement related to excavation and demolition, may not exceed \$2,000 for a first offense and \$4,000 for each subsequent offense.

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### **Additional Information**

**Draft Introductions:** None

C5

2lr2275  
CF 2lr2274

Bill No.: \_\_\_\_\_  
Requested: \_\_\_\_\_  
Committee: \_\_\_\_\_

Drafted by: Bond  
Typed by: Lynn  
Stored – 02/04/22  
Proofread by \_\_\_\_\_  
Checked by \_\_\_\_\_

By: **Senator Feldman**

**A BILL ENTITLED**

1 AN ACT concerning

2 **Public Utilities – Underground Facilities – One-Call System**

3 FOR the purpose of requiring a person notifying the one-call system before performing an  
4 excavation or demolition to select a specific start work date; altering the information  
5 that must be provided to a one-call system; requiring the ticket generated by the  
6 one-call system to include a response date and time that corresponds with the work  
7 date selected by the person; altering the time frame during which a ticket is valid;  
8 altering the time frame within which an owner-member or its contract locator must  
9 mark the location of the owner-member's underground facility and submit a certain  
10 report; and generally relating to underground facilities and the one-call system.

11 BY repealing and reenacting, with amendments,  
12 Article – Public Utilities  
13 Section 12-124 and 12-126  
14 Annotated Code of Maryland  
15 (2020 Replacement Volume and 2021 Supplement)

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

18 **Article – Public Utilities**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



1 12-124.

2 (a) Before performing excavation or demolition in the State, a person:

3 (1) shall initiate a ticket request by notifying the one-call system serving  
4 the geographic area where the excavation or demolition is to be performed;

5 (2) SHALL SELECT A START WORK DATE THAT COMMENCES:

6 (I) NOT SOONER THAN 2 BUSINESS DAYS AFTER THE TICKET IS  
7 INITIATED; AND

8 (II) NOT LATER THAN 12 BUSINESS DAYS AFTER THE TICKET IS  
9 INITIATED; and

10 [(2)] (3) may add a temporary excavator to an existing ticket.

11 (b) Notice provided to a one-call system under subsection (a) of this section shall  
12 indicate:

13 (1) the location of the proposed excavation or demolition;

14 (2) whether the proposed excavation or demolition is within rights-of-way  
15 owned or controlled by the Department of Transportation, an administration of the  
16 Department of Transportation, or the Maryland Transportation Authority and, if so, the  
17 entity and the permit number or authorization number obtained from that entity;

18 (3) the type AND EXTENT of work to be performed in connection with the  
19 proposed excavation or demolition; and

20 (4) the correct name of and contact information for the temporary  
21 excavator, if any, performing work under the ticket.

22 (c) (1) Except as provided in paragraph (2) of this subsection, on receiving  
23 notice, the one-call system shall promptly transmit a copy of the ticket to all  
24 owner-members in the geographic area indicated for that ticket.

2lr2275

1           (2) Based on information collected under § 12-124(b)(2) of this subtitle, the  
2 one-call system shall promptly transmit a copy of the ticket to the Department of  
3 Transportation, an administration of the Department of Transportation, or the Maryland  
4 Transportation Authority, as applicable.

5           (3) (I) THE TICKET SHALL INCLUDE A RESPONSE DATE AND TIME  
6 FOR OWNER-MEMBERS OR THEIR CONTRACT LOCATORS THAT CORRESPONDS WITH  
7 THE WORK DATE SELECTED BY THE PERSON WHO INITIATED THE TICKET.

8                   (II) A ticket is valid for 12 business days after the [day] SELECTED  
9 WORK DATE on [which the] A ticket THAT is transmitted by the one-call system to an  
10 owner-member OR THEIR CONTRACT LOCATOR.

11 12-126.

12           (a) An owner-member or its contract locator shall mark its underground facility  
13 if a proposed excavation or demolition that is specified in the extent of work contained in  
14 the ticket:

15                   (1) is within 5 feet of the horizontal plane of the underground facility; or

16                   (2) because of planned blasting, is so near to the underground facility that  
17 the underground facility may be damaged or disturbed.

18           (b) (1) An owner-member or its contract locator shall mark the location of its  
19 underground facility as specified under subsection (a) of this section by marking on the  
20 ground within 18 inches on a horizontal plane on either side of the underground facility.

21                   (2) (i) When marking the location of an underground facility, an  
22 owner-member or its contract locator shall use the color codes established by the American  
23 Public Works Association for marking underground facilities in effect at the time of  
24 marking.

25                           (ii) If two or more owner-members share the same color code, each  
26 owner-member or its contract locator shall include information with the marking that  
27 indicates the owner-member of the marked underground facility.

2lr2275

1 (c) Except as provided in subsection (d) of this section, within 2 business days  
2 after the day on which a ticket is transferred to an owner-member OR BEFORE THE  
3 SELECTED WORK DATE, the owner-member or its contract locator shall:

4 (1) mark the location of the owner-member's underground facility and  
5 report to the underground facilities information exchange system that the underground  
6 facility has been marked; or

7 (2) report to the underground facilities information exchange system that  
8 the owner-member has no underground facilities in the vicinity of the planned excavation  
9 or demolition.

10 (d) (1) If an owner-member or its contract locator is unable to mark the  
11 location of the owner-member's underground facility within the time period prescribed in  
12 subsection (c) of this section because of the scope of the proposed excavation or demolition,  
13 the owner-member shall:

14 (i) promptly notify the underground facilities information exchange  
15 system and the person that intends to perform the excavation or demolition; and

16 (ii) work with the person that intends to perform the excavation or  
17 demolition to develop a documented agreement for marking the underground facility.

18 (2) If the owner-member or its contract locator and person that intends to  
19 perform the excavation or demolition cannot reach a mutually documented agreement for  
20 marking under paragraph (1) of this subsection, the owner-member or its contract locator  
21 shall mark that portion of the site where excavation or demolition will first occur, and the  
22 owner-member or its contract locator shall mark the remainder of the site within a  
23 reasonable time.

24 (3) If, due to circumstances beyond the control of an owner-member or its  
25 contract locator and for reasons other than those specified in paragraph (1) of this  
26 subsection, an owner-member or its contract locator is unable to mark the location of the  
27 owner-member's underground facility within the time period prescribed in subsection (c)  
28 of this section, the owner-member or its contract locator shall report to the underground  
29 facilities information exchange system that an extension is required.

2lr2275

1                   (4)    In connection with extensive or contiguous excavation or demolition  
2 projects, the person performing the excavation or demolition and the owner-member or its  
3 contract locator may establish a working agreement regarding the time periods for marking  
4 the underground facility.

5                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 2022.



# Damage Data



## 2021 Damage Numbers in Maryland

2021 MD/DC Subscribers Damage Summary Report  
County Annual

YEAR TO DATE AS OF	NOVEMBER	REPORTED PROBLEM						County Ratio Damages per 1000 Locates
		TYPE OF LINE		REPORTED CAUSE				
County	Member Reported Tickets	Main	Service	No Call or Ticket	Hit Marked Line	Line Marked Wrong	Other	
Allegany	27,225	3	13	2	4	3	7	0.6
Anne Arundel	2	0	0	0	0	0	0	0.0
Balt City	0	0	0	0	0	0	0	#DIV/0!
Balt County	2,218	0	0	0	0	0	0	0.0
Calvert	12,724	9	6	8	2	3	2	1.2
Carroll	7,223	1	3	2	0	2	0	0.6
Cecil	0	0	0	0	0	0	0	#DIV/0!
Charles	42,677	18	23	20	11	7	3	1.0
Frederick	94,550	25	38	26	17	13	7	0.7
Garrett	6,831	2	6	5	2	0	1	1.2
Harford	23,403	0	0	0	0	0	0	0.0
Howard	1,204	0	0	0	0	0	0	0.0
Montgomery	454,010	58	201	69	83	86	21	0.6
Prince Georges	371,356	52	200	53	85	98	18	0.7
St. Mary's	22,836	18	5	11	7	3	2	1.0
Washington	30,342	8	10	9	5	2	3	0.6
Wash DC NE	58,236	9	39	18	20	8	0	0.8
Wash DC NW	87,325	18	69	29	35	20	2	1.0
Wash DC SE	34,834	11	24	11	13	11	0	1.0
Wash DC SW	9,927	1	0	0	1	0	0	0.1
Member Reported Tickets	1,286,923	233	637	263	285	256	66	870
CC Transmitted Tickets	6,566,889	Total Damages		Percentage by Cause				
Reporting %	19.60%	870		30.23%	32.76%	29.43%	7.59%	
		# Tickets		Damages per 10,000 Tickets Received				
Member Reported Tickets	1,286,923	1,286,923		2.04	2.21	1.99	0.51	6.76
CC Transmitted Tickets	6,566,889	6,566,889		0.40	0.43	0.39	0.10	1.32
		# Tickets		Damages per 1,000 Tickets Received				
Member Reported Tickets	1,286,923	1,286,923		0.20	0.22	0.20	0.05	0.68
CC Transmitted Tickets	6,566,889	6,566,889		0.04	0.04	0.04	0.01	0.13

Source: One Call Center, voluntary damage reporting system.

Note: Only 19.6% of MD Stakeholders participate in this important local reporting system.

There is no mandatory damage reporting in the Maryland statute which is an inherent weakness in the "Miss Utility" law.

# Maryland's Damage Numbers

Year	Unique Damages	Per 100,000 people	By population per sq mile	By construction spending (per \$million)	Per 1,000 Transmissions
<b>2020</b>	2,119	35.05	3.64	0.22	<b>0.43</b>
<b>2019</b>	2,646	43.77	4.54	0.28	0.56
<b>2018</b>	2,458	40.68	4.22	0.26	0.54

State / Province	Unique Damages (2020)	Per 100,000 people (2020)	By population per sq mile (2020)	By 2020 Construction Spending (per \$Million) (U.S only)	Per 1,000 Transmissions (2020)
MD	2119	35.05	3.64	0.22	0.43

○ Maryland's 2020 "Hit Rate" is less than 1% percent per 1,000 tickets.

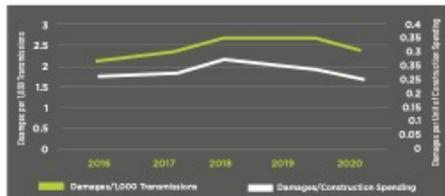
Source: 2020 Common Ground Alliance Dirt Report

# CGA DIRT

## 2020 CGA DIRT REPORT: KEY FINDINGS OVERVIEW

In September 2021, Common Ground Alliance (CGA) published its 2020 Damage Information Reporting Tool (DIRT) Report, which analyzed all 2020 damage and near-miss data submitted voluntarily by facility operators, utility locating companies, one call centers, contractors, regulators and others from the U.S. and Canada. To download the complete 2020 DIRT Annual Report, visit [commongroundalliance.com/DIRT](http://commongroundalliance.com/DIRT).

Over the last five years, damages have plateaued and leading root causes are driving the vast majority of damages.



5-Year trend of damages per 1,000 transmissions and per unit of construction spending (Millions of 2020 Dollars) –DIRT Report for 2020/Common Ground Alliance

- In 2020 U.S. damages **decreased by 12%** over 2019, but the data continues to highlight a consistency in the leading root causes and contributing factors of damages.

**\$30** BILLION  
The estimated annual societal cost of damages to buried utilities in the U.S.

- The \$30 billion estimate accounts for direct costs (facility repair) and indirect costs (property damage, medical bills, businesses unable to operate, etc.).

The **Top 5** damage root causes reported in 2020 made up nearly **70%** of the total damages reported

- **No notification** made to one call center/811
- Excavator dug prior to **verifying marks** by test-hole (pothole)
- Facility **marked inaccurately** due to abandoned facility
- Facility **not marked** due to excavator error
- Excavator **failed to maintain clearance** after verifying marks



- **Failure to notify** the one call center (811) is the single largest individual root cause, contributing to **32%** of damages.

- Other root cause groupings are converging to **become roughly equal** (see pie chart on page 2).

## COMPLEXITIES OF 2020

Unique circumstances in 2020 contributed to a more complex picture of damage than in years past and help explain the reduction in reported damages.

- Construction spending **decreased by 4.2%** year-over-year when adjusted for inflation.
- The cost of construction materials **increased by 10%** in 2020, according to the U.S. Bureau of Labor Statistics' Producer Price Index for Building Materials and Supplies Dealers.
- Estimated damages per unit of construction spending were **down approximately 8%** year-over-year.
- Inconsistencies were present in one call center transmission data, which may account for the **2.3% increase** in estimated one call transmissions.
- Several one call centers reported **significant increases** in digging on homeowner properties, without a corresponding increase in homeowner damages.
- The **Covid-19** pandemic may have affected construction activity and **increased scrutiny of safety practices on-site**.

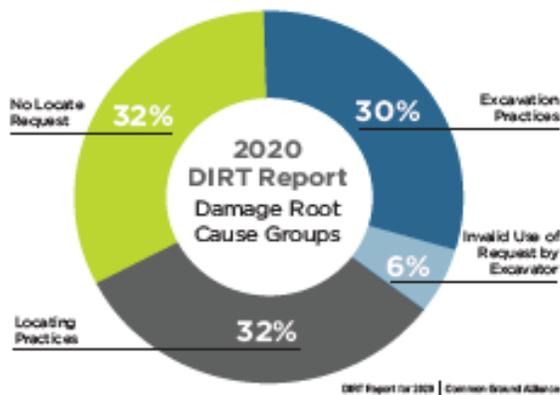
# Reported Damages by Root Cause for 2020

Coded by Root Cause Group

Root Cause	Reports	2020 % of Total	2019 % of Total
No Notification made to one call center / 811	84,918	31.81%	29.10%
Excavator dug prior to verifying marks by test-hole (pothole)	41,446	15.53%	1.94%
Facility marked inaccurately due to abandoned facility	20,569	7.71%	7.29%
Facility not marked due to locator error	17,539	6.57%	3.56%
Excavator failed to maintain clearance after verifying marks	17,128	6.42%	16.70%
Facility marked inaccurately due to locator error	15,163	5.68%	10.57%
Improper excavation practice not listed elsewhere	13,444	5.04%	4.97%
Site marked but incomplete at damage location	8,551	3.20%	0.41%
Excavator dug before valid start date/time	7,851	2.94%	9.78%
Facility marked inaccurately due to incorrect facility record/map	7,006	2.62%	2.16%
Excavator dug after valid ticket expired	5,713	2.14%	1.91%
Facility not marked due to no response from operator/contract locator	5,330	2.00%	1.27%
Facility not marked due to unlocatable facility	4,615	1.73%	1.44%
Marks faded, lost or not maintained	4,343	1.63%	1.49%
Excavator failed to shore excavation/support facilities	3,087	1.16%	3.90%
Facility not marked due to incorrect facility record/map	2,729	1.02%	0.74%
Facility marked inaccurately due to tracer wire issue	2,664	1.00%	0.14%
Excavator dug outside area described on ticket	1,489	0.56%	1.51%
Facility not marked due to abandoned facility	1,369	0.51%	0.14%
Excavator provided incorrect notification information	726	0.27%	0.25%
Previous damage	555	0.21%	0.11%
Facility not marked due to tracer wire issue	263	0.10%	0.06%
Deteriorated facility	251	0.09%	0.36%
Improper backfilling	157	0.06%	0.04%
One Call Center error	38	0.01%	0.17%

Excavation Practices   Invalid Use of Request by Excavator   Locating Practices   Miscellaneous   No Locate Request

## Reported Damages by Root Cause Group



Stakeholders interested in submitting data to the 2021 report or establishing a Virtual Private DIRT account should visit the DIRT site at [cga-dirt.com](http://cga-dirt.com).

Visit [commongroundalliance.com/DIRT](http://commongroundalliance.com/DIRT)

to download the complete 2020 DIRT Annual Report and to access the Interactive DIRT Dashboard, which allows stakeholders to view DIRT data from 2018 to 2020.

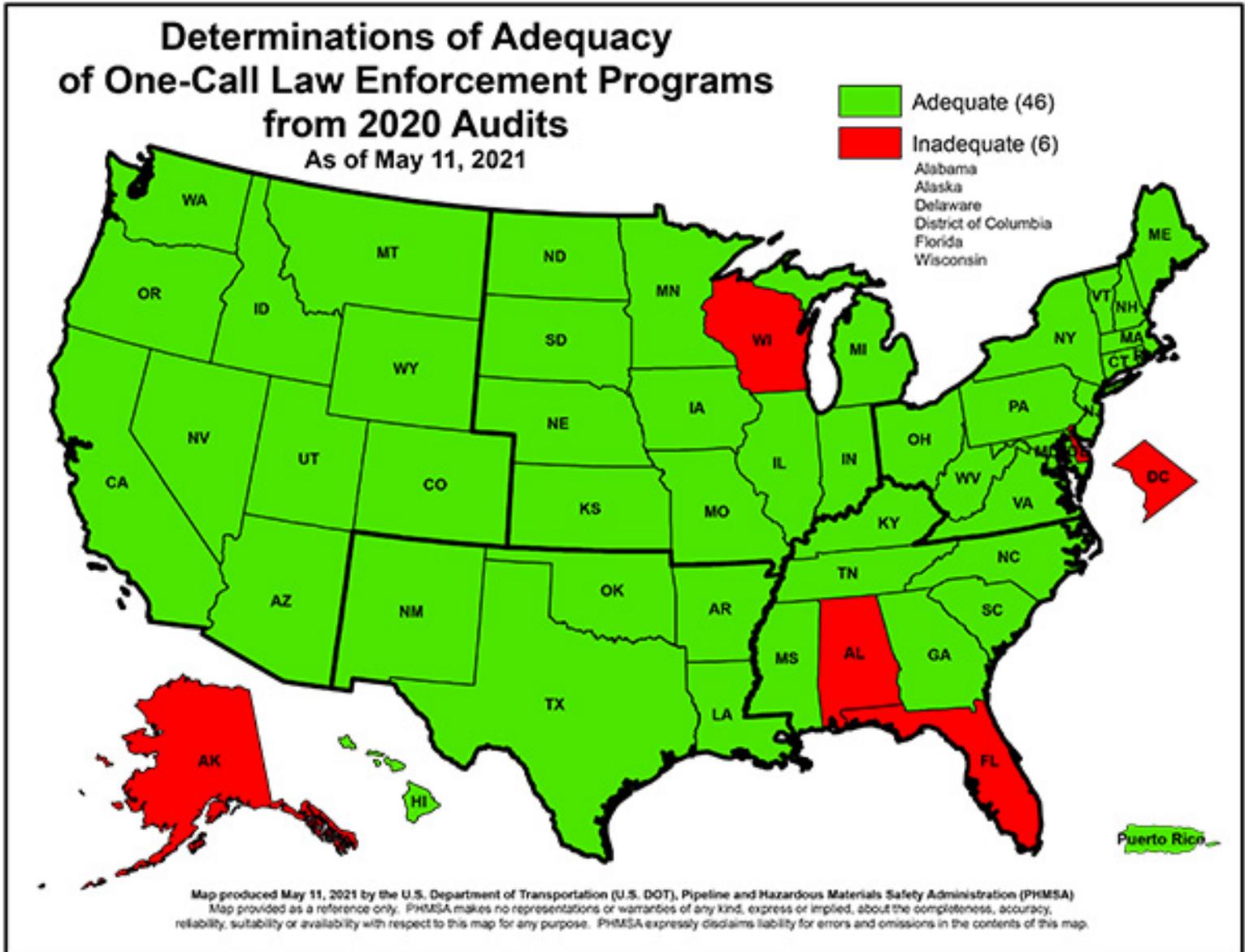
Source: [www.cga.org](http://www.cga.org) 2020 Dirt Report



# Federal Oversight



## 2020 Federal Enforcement Programs Audit





U.S. Department of Transportation  
**Pipeline and Hazardous Materials Safety Administration**

1200 New Jersey Avenue, SE Washington, DC 20590

October 20, 2021

Mr. James A. Barron Executive Director  
Maryland Underground Facilities  
Damage Prevention Authority 7223  
Parkway Drive, Suite 100  
Hanover, MD 21076

Dear Mr. Barron:

On August 12, 2021, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the Maryland Underground Facilities Damage Prevention Authority's (MDDPA) enforcement of the Maryland State excavation damage prevention law. PHMSA conducted this evaluation pursuant to 49 United States Code (USC) § 60114 and 49 Code of Federal Regulations (CFR) Part 198, Subpart D - State Damage Prevention Enforcement Programs. Based on this evaluation, PHMSA has determined that the enforcement of the Maryland excavation damage prevention law is "adequate."

PHMSA appreciates your dedication to safety. As you are aware, excavation damage continues to be a leading cause of pipeline failures, some of which have resulted in fatalities, serious injuries, and environmental damage. Nationwide statistics show that effective enforcement of state damage prevention laws reduces excavation damage and pipeline incidents, resulting in enhanced public safety. Should you or your staff have any questions regarding this letter, please contact David Appelbaum, PHMSA State Evaluator, at (202) 617-6329 or by email at [David.Appelbaum@dot.gov](mailto:David.Appelbaum@dot.gov). Sincerely,

A handwritten signature in blue ink, appearing to read "Zach Barrett".

Zach Barrett  
Director, State Programs

cc: Mr. John Clementson, Assistant Chief Engineer, Maryland Public Service Commission Ms. Susan A. M. Stroud, Deputy Director, MDDPA



# The NPV Process



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

**The NPV Process**

(3.1)

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 review, 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.

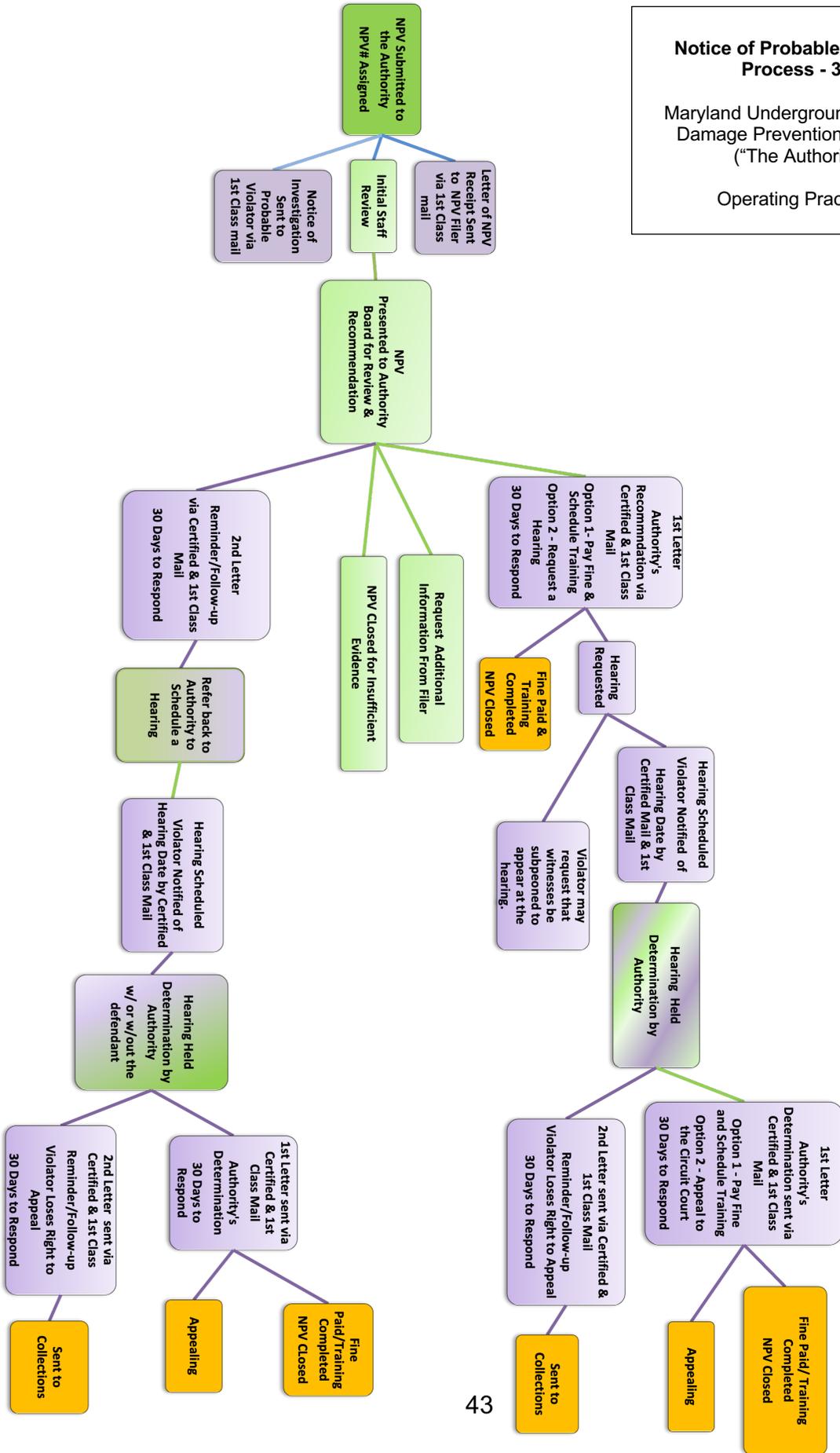
7. If the probable violator does not respond within thirty (30) days of the second letter, the Executive Director shall bring the issue back to the Authority at its next regularly scheduled meeting, at which time the Authority shall assign a hearing date for the NPV. The probable violator shall be notified 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 (30) days after receiving the decision. Should the probable violator miss the 30-day 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).

10. If there is still no response from the probable violator, the case may be sent for collection. 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. In addition, any company placed in the Closed/Incomplete status will have their company name, county of operation and the reason for being placed in the Closed/Incomplete status published on the Authority website under Companies “not in good standing” with the Authority.

## Notice of Probable Violation Process - 3.0

Maryland Underground Facilities  
Damage Prevention Authority  
("The Authority")

Operating Practices





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



# Authority Information



2022

**MARYLAND UNDERGROUND  
FACILITIES DAMAGE PREVENTION  
AUTHORITY**

**MEMBERS**  
*(Appointed by Governor Larry Hogan)*

James Dudley Exp. 9/30/2023	General Public (Carroll County)	U.S. Army Ret'd/Realtor
David Gaines Exp. 09/30/2023	Assoc. Utility Contractors of Maryland	Gaines and Company
Paul Kwiatkowski <i>Vice Chairman</i> Exp. 9/30/2023	Maryland Association of Counties	Howard County
Derek Shreves Exp. 9/30/2022	Maryland Municipal League	Town of Sykesville
Michael J. Jewell <i>Chairman</i> Exp. 9/30/2022	Underground Facility Owner	Columbia Gas
Tamara Neal <i>Treasurer</i> Exp. 9/30/2023	Underground Facilities Owner	Washington Gas
Jimmy Jennings Exp. 9/30/2023	Underground Facilities Locator	One Call Locating Systems
Kellyn H. Ruddo <i>Secretary</i> Exp 9/30/2022	One Call Centers	One Call Concepts, Inc.
Amber D. Brengel Exp. 9/30/2023	Public Works Contractors Association	Beltsville Construction Supply

*Public Utilities Article §12-107. Membership – All Authority members are appointed by the Governor of Maryland and must represent specific entities and organizations. The Authority strives for diversity in its membership (geographically, racially and sexual orientation) in order to best represent the State of Maryland and its people.*

## 2022 Authority Meeting Calendar

Currently being held via ZOOM

Wednesday	January 5 <sup>th</sup>	Open Session & Closed Executive Session (1 <sup>st</sup> Quarter Business Mtg & Election of Officers)
General Assembly "Opening Day"	January 12 <sup>th</sup>	State House, Annapolis, MD
Wednesday	February 2 <sup>nd</sup>	Public Hearings & Closed Executive Session
Wednesday	March 2 <sup>nd</sup>	Closed Executive Session
CGA Conference	April 4 <sup>th</sup> – 8 <sup>th</sup>	Marriott Conference Center, Anaheim, CA
General Assembly "Sine Die"	April 11 <sup>th</sup>	State House, Annapolis, MD
Wednesday	April 13 <sup>th</sup>	Open Session & Closed Executive Session (2 <sup>nd</sup> Quarter Business Mtg)
Wednesday	May 4 <sup>th</sup>	Public Hearings & Closed Executive Session
Wednesday	June 1 <sup>st</sup>	Closed Executive Session
MML Conference	June 12 <sup>th</sup> – 15 <sup>th</sup>	OC Convention Center, Ocean City, MD
MD Primary Day	June 28 <sup>th</sup>	Statewide & County Elections
Wednesday	July 6 <sup>th</sup>	Open Session & Closed Executive Session (3 <sup>rd</sup> Quarter Business mtg.)
Wednesday	August	Office Closed
MACo Conference	August 17 <sup>th</sup> - 20 <sup>th</sup>	OC Convention Center, Ocean City, MD
Wednesday	September 7 <sup>th</sup>	Public Hearings & Closed Executive Session
Tawes Crab Feast	September 28 <sup>th</sup>	Crisfield, MD
Wednesday	October 5 <sup>th</sup>	Open Session & Closed Executive Session (4 <sup>th</sup> Quarter Business Mtg.)
GCDPC	October 25 <sup>th</sup> – 28 <sup>th</sup>	Clarion Hotel, Ocean City, MD
Wednesday	November 2 <sup>nd</sup>	Public Hearings & Closed Executive Session
MD General - Election	November 8 <sup>th</sup>	Statewide & County Office Holders
Wednesday	December 7 <sup>th</sup>	Closed Executive Session

The Maryland Underground Facilities Damage Prevention Authority (the Authority)  
7223 Parkway Drive, Suite 100, Hanover, Maryland 21076  
Phone: 410-782-2102 web address: [www.mddpa.org](http://www.mddpa.org)

**Staff:**

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Phone: 410-782-2102  
Email: [jim.barron@mddpa.org](mailto:jim.barron@mddpa.org)

Susan A. M. Stroud, Deputy Director  
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Email: [susan.stroud@mddpa.org](mailto:susan.stroud@mddpa.org)

Deena L. Madore, Data Manager  
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Bruce C. Bereano, Consultant  
Phone: 410-267-0410  
Email: [lobbyannapolis@verizon.net](mailto:lobbyannapolis@verizon.net)

