

UNDERGROUND UTILITY LINE PROTECTION LAW
Act of Dec. 10, 1974, P.L. 852, No. 287

Cl. 66

AN ACT

To protect the public health and safety by preventing excavation or demolition work from damaging underground lines used in providing electricity, communication, gas, propane, oil delivery, oil product delivery, sewage, water or other service; imposing duties upon the providers of such service and persons and other entities preparing drawings or performing excavation or demolition work; and prescribing penalties. (Title amended Oct. 30, 2017, P.L.806, No.50)

Section 1. The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Abandoned" means no longer in service and physically disconnected from a line.

"Alleged violation" means an instance when a person by action or inaction fails to fulfill the obligations of this act.

"Business day" means any day except a Saturday, Sunday or legal holiday prescribed by statute. A business day begins at 12:00:00 a.m. and ends at 11:59:59 p.m.

"Cartway" (Deleted by amendment)

"Chairman" means the Chairman of the Pennsylvania Public Utility Commission.

"Commission" means the Pennsylvania Public Utility Commission.

"Committee" means the damage prevention committee established under section 7.8.

"Common Ground Alliance best practices" means the damage prevention industry recommended standards issued by the Common Ground Alliance, a not-for-profit corporation created pursuant to the issuance of the United States Department of Transportation's Common Ground Task Force report in 1999.

"Complex project" means an excavation that involves more work than properly can be described in a single locate request or any project designated as such by the excavator or facility owner as a consequence of its complexity or its potential to cause significant disruption to lines or facilities and the public, including excavations that require scheduling locates over an extended time frame.

"Consumer Price Index" means the index of consumer prices developed and updated by the Bureau of Labor Statistics of the United States Department of Labor.

"Continuing property records" (Deleted by amendment)

"Contractor" (Deleted by amendment Nov. 29, 2006, P.L.1593, No.181)

"Conventional oil and gas well" means a conventional oil and gas well as defined in section 2 of the act of June 23, 2016 (P.L.375, No.52), known as the Pennsylvania Grade Crude Development Act.

"Demolition work" means the partial or complete destruction of a structure, by any means, served by or adjacent to a line or lines.

"Department" (Deleted by amendment)

"Designer" means any architect, engineer or other person who or which prepares a drawing for a construction or other project which requires excavation or demolition work as herein defined.

"Emergency" means a sudden or unforeseen occurrence involving a clear and immediate danger to life, property and the

environment, including, but not limited to, serious breaks or defects in a facility owner's lines.

"Excavation work" means the use of powered equipment or explosives in the movement of earth, rock or other material, and includes, but is not limited to, anchoring, augering, backfilling, blasting, boring, digging, ditching, drilling, driving-in, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling. The term does not include soft excavation technology such as vacuum, high pressure air or water, tilling of soil for agricultural purposes to a depth of less than eighteen inches, performing minor routine maintenance up to a depth of less than eighteen inches measured from the top of the edge of the cartway or the top of the outer edge of an improved shoulder, in addition to the performance of incidental de minimis excavation associated with the routine maintenance and the removal of sediment buildup, within the right-of-way of public roads or work up to a depth of twenty-four inches beneath the existing surface within the right-of-way of a State highway, work performed by persons whose activities must comply with the requirements of and regulations promulgated under the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act, or the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act, that relate to the protection of utility facilities or the direct operations on a well pad following construction of the well pad and that are necessary or operations incidental to the extraction of oil or natural gas.

"Excavator" means any person who or which performs excavation or demolition work for himself or for another person.

"Facility owner" means the public utility or agency, political subdivision, municipality, authority, rural electric cooperative or other person or entity who or which owns or operates a line. The term does not include the Department of Transportation within a State highway right-of-way. The term does not include any of the following:

(1) A person serving the person's own property through the person's own line, if the person does not provide service to any other customer.

(2) A person using a line which the person does not own or operate, if the use of the line does not serve more than a single property.

"Federal pipeline safety laws" means the provisions of 49 U.S.C. Ch. 601 (relating to safety), including the regulations promulgated under 49 U.S.C. Ch. 601.

"Final design" means the engineering and construction drawings that are provided to a bidder or other person who is asked to initiate construction on the bid date or the date the project is set for construction in the absence of a bid.

"Fiscal year" means the fiscal year utilized by the commission.

"Horizontal directional drilling" means the use of horizontal boring devices that can be guided between a launch point and a reception point beneath the earth's surface.

"Injury" means a bodily harm to a person, who, as a result of the bodily harm, immediately receives medical attention away from the scene of the incident.

"Lawful start date" means the scheduled start date as provided under section 1.1.

"Line" or "facility" means an underground conductor or underground pipe or structure used in providing electric or communication service, or an underground pipe used in carrying, gathering, transporting or providing natural or artificial gas, petroleum, propane, oil or petroleum and production product, sewage, water or other service to one or more transportation carriers, consumers or customers of such service and the appurtenances thereto, regardless of whether such line or structure is located on land owned by a person or public agency or whether it is located within an easement or right-of-way. The term shall include unexposed storm drainage and traffic loops that are not clearly visible. The term shall include unconventional oil and gas well production and gathering lines or facilities. The term shall not include stripper well lines unless the line or facility is a regulated onshore gathering line as defined in regulations promulgated after January 1, 2006, by the United States Department of Transportation pursuant to the Pipeline Safety Act of 1992 (Public Law 102-508, 49 U.S.C. § 60101 et seq.), if the regulated gathering line is subject to the damage prevention program requirements of 49 CFR § 192.614.

"Locate request" means a communication between an excavator or designer and the One Call System in which a request for locating facilities is processed. Locate requests submitted by an excavator performing work within the right-of-way of any State highway, either under contract to the Department of Transportation or under authority of a permit issued by the Department of Transportation, shall include the number of the Department of Transportation contract or permit.

"Minor routine maintenance" means shaping of or adding dust palliative to unpaved roads, removal and application of patches to the surface or base of flexible base, rigid base or rigid surface roads by either manual or mechanized method to the extent of the existing exposed base material, crack and joint sealing, adding dust palliative to road shoulders, patching and cutting of shoulders and shoulder bases by either manual or mechanized methods to the extent of the existing exposed base, and cleaning of inlets and drainage pipes and ditches.

"One Call System" means the communication system established within this Commonwealth to provide a single nationwide toll-free telephone number or 811 number for excavators or designers or any other person covered by this act to call facility owners and notify them of their intent to perform excavation, demolition or similar work as defined by this act. The One Call System shall be incorporated and operated as a nonprofit corporation pursuant to 15 Pa.C.S. Pt. II Subpt. C (relating to nonprofit corporations).

"Operator" means any individual in physical control of powered equipment or explosives when being used to perform excavation or demolition work.

"Owner" (Deleted by amendment)

"Person" means an individual, partnership, corporation, political subdivision, a municipal authority, the Commonwealth and its agencies and instrumentalities, or any other entity.

"Powered equipment" means any equipment energized by an engine or motor and used in excavation or demolition work.

"Preconstruction request" (Deleted by amendment)

"Preconstruction meeting" means a scheduled event held by the excavator, designer, project owner and facility owner, or an agent of the excavator, designer, project owner and facility owner, prior to the commencement of excavation or demolition work in a complex project.

"Project owner" means any person who or which engages an excavator for construction or any other project which requires excavation or demolition work.

"Secretary" (Deleted by amendment)

"Site" (Deleted by amendment)

"Report of alleged violation" means a recorded account of an alleged violation.

"Stripper well" means a conventional oil and gas well with a maximum daily average production which does not exceed fifteen barrels of oil and ninety thousand cubic feet of natural gas during any twelve-month consecutive time period.

"Stripper well lines" means a production or gathering line or facility that has a nominal inside diameter of eight inches or less, only carries oil or natural gas produced exclusively from one or more stripper wells and is not regulated under the Federal pipeline safety laws and subject to the pipeline damage prevention requirements in 49 C.F.R. § 192.614 (relating to damage prevention program) or 49 C.F.R. § 195.442 (relating to damage prevention program).

"Subsurface utility engineering" or "SUE" means those techniques set forth in the American Society of Civil Engineers (ASCE) most recently published standard CI/ASCE 38-02, or its successor document as determined by the One Call System.

"Tolerance zone" means the horizontal space within eighteen inches of the outside wall or edge of a line or facility.

"Traffic loop" means a device that detects metal objects such as cars and bicycles based on the change in inductance that they induce in the device.

"Unconventional formation" means a geological shale formation existing below the base of the Elk Sandstone or its geologic equivalent stratigraphic interval where oil or natural gas generally cannot be produced at economic flow rates or in economic volumes except by vertical or horizontal well bores stimulated by hydraulic fracture treatments or by using multilateral well bores or other techniques to expose more of the formation to the well bore.

"Unconventional oil and gas well" means a bore hole drilled or being drilled for the purpose of or to be used for the production of oil or natural gas from an unconventional formation.

"Well pad" means area, under the control of an oil or natural gas company, occupied by equipment or facilities necessary or required for the drilling, production or plugging of an oil or natural gas well.

"Work site" means the specific place denoted on the locate request where excavation or demolition work is being or is planned to be performed. A work site should be denoted as a clearly defined, bounded area, including relevant identifiable points of reference such as the specific address with a specific description as to the portion of the property, including descriptions such as front, back, left side, right side and direction such as N, S, E, W or variants. Where possible, the points should also reference, without limitation, the size and radius or circumference of the excavation, utility pad or pedestal numbers, utility pole numbers, landmarks, including trees, fountains, fences, railroads, highway and pipeline markers, and latitude and longitude.

"Working day" (Deleted by amendment)

(1 amended Oct. 30, 2017, P.L.806, No.50)

Compiler's Note: Section 8 of Act 38 of 1991, which amended section 1, provided that Act 38 shall expire December 31, 1996.

Section 1.1. The lawful start date shall be three business days through ten business days following notification to the One Call System.

(1.1 added Oct. 30, 2017, P.L.806, No.50)

Section 2. It shall be the duty of each facility owner:

(1) To be a member of and give written notice to the One Call System. Such notice shall be in a form acceptable to the One Call System and include:

(i) the legal name of the facility owner and their official mailing address;

(ii) as follows:

(A) The names of the counties and municipalities, down to and including wards in Philadelphia, Pittsburgh, Allentown and Erie, in which its lines are located and other related information as may be required by the One Call System regarding the location of a member's facilities.

(B) The One Call System may not require its members to locate lines or facilities installed before the effective date of this clause unless the member has existing maps of the lines or facilities and the member's existing maps meet the specifications of the One Call System's Member Mapping Solutions. Nothing under this clause shall prohibit the One Call System members from voluntarily submitting to the One Call System maps of lines or facilities installed before the effective date of this clause.

(iii) the facility owner's address (by street, number and political subdivision) and the telephone number and fax number, if available, to which inquiries may be directed as to the location of such lines;

(iv) the street identifications or like information within each of the municipalities in which its lines are located. This information shall be in a form acceptable to the One Call System. Upon acceptance of the information from a facility owner, the One Call System shall provide the facility owner with notification within the boundaries described. All facility owners shall agree to indemnify and hold harmless the One Call System for any errors and omissions on the part of the facility owner or the excavator or designer providing the information as the agent of the facility owner; and

(v) any other information required by the One Call System.

(2) To provide the One Call System, within five business days, with any revised information required under this section.

(3) ((3) deleted by amendment Dec. 19, 1996, P.L.1460, No.187)

(4) Not more than ten business days after receipt of a request from a designer who identifies the work site of excavation or demolition work for which he is preparing a drawing, to initially respond to his request for information as to the position and type of the facility owner's lines at such work site based on the information currently in the facility owner's possession or to mark the plans which have been provided to it by the designer by field location or by another method agreed to by the designer, excavator and facility owner, or their agent. The facility owner shall so advise the person making the request of the facility owner's status at the work site through the One Call System.

(5) After receipt of a timely request from an excavator or operator who identifies the work site of excavation or demolition work he intends to perform and not later than the business day prior to the lawful start date of excavation:

(i) To mark, stake, locate or otherwise provide the position of the facility owner's underground lines at the work site

within eighteen inches horizontally from the outside wall of such line in a manner so as to enable the excavator, where appropriate, to employ prudent techniques, which may include hand-dug test holes, to determine the precise position of the underground facility owner's lines. This shall be done to the extent such information is available in the facility owner's records or by use of standard locating techniques other than excavation. Standard locating techniques shall include, at the utility owner's discretion, the option to choose available technologies suitable to each type of line or facility being located at the work site, topography or soil conditions or to assist the facility owner in locating its lines or facilities, based on accepted engineering and operational practices. Facility owners shall make reasonable efforts during the excavation phase to locate or notify excavators of the existence and type of abandoned lines.

(i.1) To identify the location of an actually known facility's point of connection to its facilities, where the point of connection is not owned or operated by the facility owner. A facility owner may identify the location of a known facility connected to its facilities, but not owned or operated by the facility owner, as a helpful guide to the excavator or owner. The identification shall not be deemed to impose any liability upon the facility owner for the accuracy of the other facility's identification.

(ii) To timely elect to excavate around its facilities in fulfillment of this subparagraph, at its option.

(iii) ((iii) deleted by amendment Dec. 19, 1996, P.L.1460, No.187)

(iii.1) To propose mutually agreeable scheduling by which the excavator, facility owner or designer may locate the facilities.

(iv) ((iv) deleted by amendment Dec. 19, 1996, P.L.1460, No.187)

(v) To respond to all notices through the One Call System, provided the request is made in the time frame set forth under this act. The response shall be made not later than the end of the second business day following receipt of the notification by the One Call System, excluding the business day upon which the notification is received, or not later than the day prior to the lawful start date of excavation if the excavator specifies a later date or, in the case of an emergency, to respond through the One Call System as soon as practicable following receipt of notification of the emergency by the One Call System.

(v.1) To, if a facility owner failed to respond to an original, proper, nonemergency locate request from the One Call System or to a renotification under section 5(20), communicate directly to the excavator within two hours after renotification of the information about its facility location and, if necessary and possible, go to the proposed work site to mark, stake or locate its underground lines or to verify to the excavator that the facility owner's underground lines are not within the area of the proposed work site.

(vi) In marking the approximate position of underground lines or facilities, to follow the Common Ground Alliance Best Practices for Temporary Marking set forth in ANSI standard Z535.1. Should the Common Ground Alliance Best Practices be amended, the amended guidelines shall be applied and followed. If the Common Ground Alliance Best Practices no longer publishes guidelines for temporary markings or if the responsibility for publishing the guidelines is transferred to or assumed by

another entity, the facility owner shall follow the guidelines approved by the One Call System's board of directors.

(vii) To respond to emergency notifications as soon as practicable following receipt of notification of such emergency. The response by the facility owner shall be consistent with the nature of the emergency information received by the facility owner.

(viii) To participate in preconstruction meetings for a complex project or as described in section 5(3).

(ix) If notification is received pursuant to section 5(8), to give priority to responding to notification as an emergency.

(6) ((6) deleted by amendment Dec. 19, 1996, P.L.1460, No.187)

(7) ((7) deleted by amendment Dec. 19, 1996, P.L.1460, No.187)

(8) (Deleted by amendment Nov. 29, 2006, P.L.1593, No.181)

(9) If a facility owner fails to become a member of the One Call System in violation of this act and a line or lines of such nonmember facility owner are damaged by an excavator by reason of the excavator's failure to notify the facility owner because the facility owner was not a member of the One Call System serving the location where the damage occurred, such facility owner shall have no right of recovery from the excavator of any costs associated with the damage to its lines. The right herein granted shall not be in limitation of any other rights of the excavator.

(10) To submit a report of alleged violation to the commission through the One Call System not more than thirty business days after receipt of notice that the facility owner's lines have been damaged by excavation or demolition work or if the facility owner believes a violation of this act has been committed in association with excavation or demolition work. The report of alleged violation shall be in a form and manner as required by the commission. No report may be required where the cost to repair the damage to the facility owner's lines is less than two thousand five hundred dollars (\$2,500), unless the same person damaged the facility owner's lines two or more times within a six-month period.

(11) To comply with all requests for information by the commission relating to the commission's enforcement authority under this act within thirty days of the receipt of the request.

(12) To participate in the One Call System's Member Mapping Solutions as determined by the One Call System's board of directors.

(13) To maintain existing records of main lines abandoned on or after the effective date of this paragraph and to mark, locate or identify the main lines if possible, based upon the existing records. The records shall include written or electronic documents or drawings in the possession of the facility owner that show the location of an existing line or facility.

(2 amended Oct. 30, 2017, P.L.806, No.50)

Compiler's Note: Section 8 of Act 38 of 1991, which amended section 2(1), (3) and (5), provided that Act 38 shall expire December 31, 1996.

Section 3. It shall be the duty of the One Call System:

(1) ((1) deleted by amendment Dec. 19, 1996, P.L.1460, No.187)

(1.1) To assign one or more serial numbers and the date that the work site may legally be excavated and to log the entire voice transaction on logging recorders in appropriate digital form and maintain these logs for five years. All records

shall be indexed and available to the parties involved at a reasonable cost and at reasonable times set by the One Call System.

(1.2) To perform the obligations, as set forth under this section, on behalf of the facility owner, excavator or designer as established by the board of directors of the One Call System.

(1.3) To provide access to municipal lists provided to the One Call System for those interested parties. This list shall contain facility owners having lines in the municipality, including wards as indicated in section 2(1)(ii), and to maintain, for each municipality, a list containing the information as required to be submitted by the facility owner. Such list shall be updated as revised information is received from the facility owner within five business days.

(2) ((2) deleted by amendment)

(3) To, per memoranda of understanding between the commission and the One Call System, provide reports of alleged violations and other information, such as photographs, photocopies and drawings, that are submitted with the report of alleged violation. The One Call System shall provide access to or photocopies of One Call System response records, tickets or other similar information related to matters covered by this act under investigation by the commission, pursuant to its enforcement authority under this act. The One Call System may provide reports of alleged violations to the Pennsylvania Emergency Management Agency, per memoranda of understanding.

(4) To determine the maximum geographic area that shall constitute a valid single notification and to determine when multiple notifications shall be required of any person, including the method, the type and the number of notifications in a complex project.

(5) If approved by the board of directors of the One Call System, to offer a service for the application and obtaining of State or municipal permits for excavation work. Issuance of the required permits shall be the responsibility of the appropriate State or municipal agency which has jurisdiction over the type of excavation work being performed.

(6) Pursuant to policies adopted by the One Call System's board of directors, to provide a secure repository for and access to subsurface utility engineering data received from project owners to affected facility owner members.

(7) To inquire, when an excavator has notified the One Call System of the existence of a release of natural gas or other hazardous substance or of potential danger to life, health or property, whether the excavator has notified the 911 system. If the 911 system has not been notified, the One Call System shall notify the excavator of the excavator's responsibility to notify the 911 system and shall make a record of the conversation.

(8) To notify the facility owner as soon as possible that an excavator has identified an unmarked or incorrectly marked facility and of the facility owner's responsibilities under section 2(5)(v.1).

(3 amended Oct. 30, 2017, P.L.806, No.50)

Section 3.1. (a) The duties of the One Call System are those duties as set forth in section 3. Duties assigned to other parties in other sections of this act shall be the duties of those parties and shall not be imputed to the One Call System, including the duty to provide accurate information to the One Call System concerning proposed excavation and the duty to locate facilities at a work site.

(b) The One Call System shall not be liable for damages to the person or the person's property arising out of its nonnegligent actions in furtherance of the duties imposed under this act and shall be liable only if the failure to comply was the proximate cause of any damages claimed.

(c) (Reserved).

(d) The One Call System shall be governed by a board of directors to be chosen by the facility owners. No less than twenty percent of the seats on the board shall be held by municipalities or municipal authorities. The board shall include all of the following:

(1) The chairman or his designee.

(2) The Director of the Pennsylvania Emergency Management Agency or his designee.

(3) ((3) deleted by amendment)

(4) The Secretary of Transportation or his designee.

(5) An excavator or excavation industry representative.

(6) A designer or designer industry representative.

(7) An owner or operator or a representative of an owner or operator of pipelines associated with conventional oil and gas wells. The owner or operator may be a facility owner or a pipeline owner or operator who voluntarily submits maps of its lines or facilities to the One Call System.

(8) A facility owner or facility owner representative of pipelines associated with unconventional oil and gas wells.

(e) Operation costs for the One Call System shall be shared, in an equitable manner for services received, by facility owner members as determined by the One Call System's board of directors. Political subdivisions with a population of less than two thousand people or municipal authorities having an aggregate population in the area served by the municipal authority of less than five thousand people shall be exempt from the payment of any service fee. The One Call System may be reimbursed for its costs in providing this service from the contractor fees.

(f) All fees shall be set by the board of directors and shall be based on the latest annual audited cost factors of the One Call System. Fees shall be set and adjusted to a rate not more than five percent above the audited cost factor plus the current average published Consumer Price Index for Pennsylvania. Costs of capital improvements may be added, if the improvement receives a majority vote of the board of directors.

(f.1) An excavator, designer or operator who proposes to commence excavation or demolition work and requests information from the One Call System shall pay to the One Call System an annual fee for the service provided by the One Call System under section 3. The fee shall be set by the One Call System board of directors and shall be used to offset a portion of the operation costs of the One Call System and a portion of the operation costs levied on the One Call System's political subdivision and municipal authority members. Failure to pay the fee shall constitute a violation of this act and shall subject the excavator, designer or operator to the enforcement authority of the commission for the nonpayment.

(g) ((g) deleted by amendment).

(h) Any request for information shall be reviewed and provided as determined in accordance with the procedure established by the One Call System's board of directors.

(3.1 amended Oct. 30, 2017, P.L.806, No.50)

Section 4. It shall be the duty of each designer preparing a drawing which requires excavation or demolition work within this Commonwealth:

(1) ((1) deleted by amendment Dec. 19, 1996, P.L.1460, No.187)

(2) To request the line and facility information prescribed by section 2(4) from the One Call System not less than ten nor more than ninety business days before final design is to be completed. This clause is not intended to prohibit designers from obtaining such information more than ninety days before final design is to be completed; however, they shall state in their requirements that such work is preliminary.

(2.1) To forward a copy of the project plans to each facility owner who requests a copy. If a designer is unable to provide a copy because of security of the project or proprietary concerns regarding the design or the project, the designer shall negotiate in a timely manner with the facility owner the means of obtaining the necessary data.

(3) To show upon the drawing the position and type of each facility owner's line, derived pursuant to the request made as required by clause (2), and the name of the facility owner as shown on the list referred to in section 3.

(4) To make a reasonable effort to prepare the construction drawings to avoid damage to and minimize interference with a facility owner's facilities in the construction area by maintaining the clearance as provided for in the applicable easement condition or an eighteen-inch clearance of the facility owner's facilities if no easement restriction exists.

(5) A designer shall be deemed to have met the obligations of clause (2) if he calls the One Call System and shows, as proof, the serial number of one call notice on drawings. The designer shall also show the toll-free number of the One Call System on the drawing near his serial number.

(6) If, after receiving information from the facility owners, the designer decides to change the work site of a proposed excavation, the obligations imposed by this section shall apply to the new work site.

(7) The designer who has complied with the terms of this act and who was not otherwise negligent shall not be subject to liability or incur any obligation to facility owners, operators, owners or other persons who sustain injury to person or property as a result of the excavation or demolition planning work of the designer.

(8) To submit a report of alleged violation to the commission through the One Call System not more than thirty business days from the time the designer becomes aware that a violation of this act may have been committed in association with excavation or demolition work. The report of alleged violation shall be in a form and manner as required by the commission.

(9) To request line and facility information required under section 2(4) from the One Call System and to pay the applicable fee for the request.

(4 amended Oct. 30, 2017, P.L.806, No.50)

Compiler's Note: Section 8 of Act 38 of 1991, which added section 4(6), provided that Act 38 shall expire December 31, 1996.

Section 5. It shall be the duty of each excavator who intends to perform excavation or demolition work within this Commonwealth:

(1) ((1) deleted by amendment Dec. 19, 1996, P.L.1460, No.187)

(2) ((2) deleted by amendment Dec. 19, 1996, P.L.1460, No.187)

(2.1) To request the location and type of facility owner lines at each work site by notifying the facility owner through the One Call System. Notification shall be not less than three nor more than ten business days in advance of beginning excavation or demolition work. No work shall begin earlier than the lawful start date which shall be on or after the third business day after notification. The lawful start date shall exclude the date upon which notification was received by the One Call System and notification received on a Saturday, Sunday or holiday, which shall be processed on the following business day. In the case of a complex project, notification shall not be less than ten business days in advance of the beginning of excavation or demolition work.

(2.2) To provide the One Call System with exact information to identify the work site so that facility owners might provide indications of their lines. An excavator shall be deemed to have met the obligations of clause (2.1) if he calls the One Call System, provides the work site and other required information and receives a serial number.

(3) In a complex project or if an excavator intends to perform work at multiple work sites or over a large area, to take reasonable steps to work with facility owners, including scheduling and conducting a preconstruction meeting, so that they may locate their facilities at a time reasonably in advance of the actual start of excavation or demolition work for each phase of the work. A preconstruction meeting may take place at any time prior to the commencement of excavation or demolition work, and the excavator, facility owners and designer, or their agents, shall attend the meeting. Notice of the meeting shall be given sufficiently in advance so as to permit attendance, either in person or electronically, by the excavator, facility owners and designer, or their agents, and shall include information sufficient to identify the scope of work. If the excavator does not believe that a preconstruction meeting is necessary under the circumstances of this clause it shall indicate such belief in its notice, but any facility owner with facilities at the work site may request a meeting with the excavator, and a meeting shall be held between the facility owner and the excavator. After commencement of excavation or demolition work, the excavator shall be responsible for protecting and preserving the staking, marking or other designation until no longer required for proper and safe excavation or demolition work at or near the underground facility or by contacting the One Call System to request that the facilities be marked again in the event that the previous markings have been compromised or eliminated.

(3.1) To comply with the requirements established by the One Call System as determined by the board of directors regarding the maximum area that a notification may cover.

(4) To exercise due care and to take all reasonable steps necessary to avoid injury to or otherwise interfere with all lines where positions have been provided to the excavator by the facility owners pursuant to section 2(5). Within the tolerance zone the excavator shall employ prudent techniques, which may include hand-dug test holes, vacuum excavation or similar devices to ascertain the precise position of such facilities. If insufficient information to safely excavate is available pursuant to section 2(5), the excavator shall employ like prudent techniques which shall be paid for by the project owner pursuant to clause (15).

(5) If the facility owner fails to respond to the excavator's timely request as provided under section 2(5) or

the facility owner notifies the excavator that the line cannot be marked within the time frame and a mutually agreeable date for marking cannot be arrived at, the excavator may proceed with excavation as scheduled, but not earlier than the lawful dig date, provided he exercises due care in his endeavors, subject to the limitations contained in this clause and clauses (2.1) through (4) and (20).

(6) To inform each operator employed by the excavator at the work site of such work of the information obtained by the excavator pursuant to clauses (2.1) through (5), and the excavator and operator shall:

(i) Plan the excavation or demolition work to avoid damage to or minimize interference with a facility owner's facilities in the construction area. Excavation or demolition work which requires temporary or permanent interruption of a facility owner's service shall be coordinated with the affected facility owner in all cases.

(ii) After consulting with a facility owner, provide such support and mechanical protection for known facility owner's lines at the construction work site during the excavation or demolition work, including during backfilling operations, as may be reasonably necessary for the protection of such lines.

(7) To report immediately to the facility owner any break or leak on its lines, or any dent, gouge, groove or other damage to such lines or to their coating or cathodic protection, made or discovered in the course of the excavation or demolition work. The One Call System board of directors may adopt procedures to permit reporting under this clause through the One Call System.

(8) To immediately notify 911 and the facility owner if the damage results in the escape of any flammable, toxic or corrosive gas or liquid which endangers life, health or property. The excavator shall take reasonable measures, based on its knowledge, training, resources, experience and understanding of the situation, to protect themselves and those in immediate danger, the general public, the property and the environment until the facility owner or emergency responders have arrived and completed their assessment and shall remain on the work site to convey any pertinent information to responders that may help them to safely mitigate the situation.

(9) The time requirements of clause (2.1) shall not apply to a facility owner or excavator performing excavation or demolition work in an emergency, as defined in section 1; nonetheless, all facility owners shall be notified as soon as possible before, during or after excavation or demolition work, depending upon the circumstances.

(10) ((10) deleted by amendment Dec. 19, 1996, P.L.1460, No.187)

(11) To use the color white to mark a proposed excavation work site when exact work site information cannot be provided.

(11.1) To assist a facility owner in determining involvement of a facility owner's lines by disclosing additional available information requested by the facility owner, including dimensions and the direction of proposed excavations.

(11.2) If using horizontal directional drilling (HDD), at a minimum, to utilize the best practices published by the HDD Consortium.

(12) The following standards shall be applied in determining whether an excavator shall incur any obligation or be subject to liability as a result of an excavator's demolition work or excavation work damaging a facility owner's facilities:

(i) The excavator who has complied with the terms of this act and who was not otherwise negligent shall not be subject to liability or incur any obligation to facility owners, operators, project owners or other persons who sustain injury to person or property as a result of the excavator's excavation or demolition work damaging a facility owner's lines.

(ii) Where an excavator has failed to comply with the terms of this act or was otherwise negligent, and the facility owner or designer has misidentified, mislocated or failed to identify its facilities pursuant to this act, then in computing the amount of reimbursement to which the facility owner is entitled, the cost of repairing or replacing its facilities shall be diminished in the same proportion that the facility owner's or designer's misidentification, mislocation or failure to identify the facilities contributed to the damage. Should the facility owner or designer not have misidentified, mislocated or failed to identify its facilities pursuant to this act, there shall be no diminution of the facility owner's right of recovery.

(iii) ((iii) deleted by amendment Dec. 19, 1996, P.L.1460, No.187)

(13) If, after receiving information from the One Call System or directly from a facility owner, the excavator decides to change the location, scope or duration of a proposed excavation, the obligations imposed by this section shall apply to the new location.

(14) If an excavator removes its equipment and vacates a work site for more than two business days, to renotify the One Call System unless other arrangements have been made directly with the facility owners involved in his work site.

(15) When the information required from the facility owner under section 2(5)(i) cannot be provided or, due to the nature of the information received from the facility owner, it is reasonably necessary for the excavator to ascertain the precise location of any line or abandoned or unclaimed lines by prudent techniques, which may include hand-dug test holes, vacuum excavation or other similar devices, the excavator shall promptly notify the project owner or the project owner's representative, either orally or in writing. If oral notification is given, the notice shall be reduced to writing within a reasonable time by the project owner or excavator. After giving such notice, the excavator shall be entitled to compensation from the project owner for this additional work as provided in the latest edition of the Pennsylvania Department of Transportation Form 408 specifications for extra work performed on a force account basis. The provisions of this subsection shall not be deemed to limit any other rights which the excavator has under its contract with the project owner or otherwise. Provisions in any contract, public or private, which attempt to limit the rights of excavators under this section shall not be valid for any reason, and any attempted waiver of this section shall be void and unenforceable as against public policy and any such attempted waiver shall be reported to the commission.

(16) To submit a report of an alleged violation to the commission through the One Call System not more than ten business days after striking or damaging a facility owner's line during excavation or demolition or if the excavator believes a violation of this act has been committed in association with excavation or demolition work. The report of an alleged violation shall be in a form and manner as required by the commission.

(17) To comply with all requests for information by the commission relating to the commission's enforcement authority under this act within thirty days of the receipt of the request.

(18) To, if it chooses to do so and if working for a facility owner, a municipality or a municipal authority, delegate the power to discharge the duties set forth in clauses (2.1) and (2.2) to its project owner, with the project owner's consent. If the power is delegated pursuant to this clause, both the excavator and the project owner shall be responsible for providing the required notices.

(19) To ensure the accuracy of any information provided to the One Call System pursuant to this section.

(20) To renotify the One Call System of an unmarked or incorrectly marked facility, if an original, proper, nonemergency locate request has been made to the One Call System and, upon initial arrival at the proposed work site, it is apparent to the excavator that there is an unmarked or incorrectly marked facility. An excavator may not begin excavating in the affected area of the work site until after receiving sufficient information from the facility owner to safely excavate. If the facility owner fails to provide sufficient information to the excavator within three hours after the excavator has notified the One Call System of the unmarked or incorrectly marked facility, the excavator may proceed with excavation subject to the limitations under clause (5).

(21) To make a locate request to the One Call System prior to excavation or demolition work and to pay the applicable fee for the request.

(5 amended Oct. 30, 2017, P.L.806, No.50)

Compiler's Note: Section 8 of Act 38 of 1991, which amended or added section 5(4), (11) and (13), provided that Act 38 shall expire December 31, 1996.

Section 6. Except as otherwise provided in this act, this act shall not be deemed to amend or repeal any other law, Commonwealth regulation or any local ordinance enacted pursuant to law concerning the same subject matter, it being the legislative intent that any such other law or local ordinance shall have full force and effect where not inconsistent with this act.

(6 amended Nov. 29, 2006, P.L.1593, No.181)

Section 6.1. It shall be the duty of each project owner who engages in excavation or demolition work to be done within this Commonwealth:

(1) To utilize sufficient quality levels of subsurface utility engineering or other similar techniques whenever practicable to properly determine the existence and positions of underground facilities when designing known complex projects having an estimated cost of four hundred thousand dollars (\$400,000) or more.

(2) To timely respond to notifications received from excavators pursuant to section 5(15).

(3) To not release to bid or construction any project until after final design is completed.

(4) To participate in design and preconstruction meetings either directly or through a representative.

(5) To furnish the pertinent data obtained through subsurface utility engineering to the One Call System in a mutually agreeable format.

(6) For new construction and where practicable in the opinion of the project owner, to install color-coded permanent markers to indicate the type and location of all laterals installed by the project owner.

(7) To submit a report of alleged violation to the commission through the One Call System not more than ten business days after striking or damaging a facility owner's line during excavation or demolition work activities, after a project owner's contracted excavator strikes or damages a facility owner's line during excavation or demolition activities or if the project owner believes a violation of this act has been committed in association with excavation or demolition. The report of alleged violation shall be in a form and manner as required by the commission.

(6.1 amended Oct. 30, 2017, P.L.806, No.50)

Section 7. (a) The Auditor General may review management and financial audits of the One Call System, which audits shall be performed by a qualified auditing firm within this Commonwealth. A copy of the audit shall be submitted to the Auditor General upon its completion and to the General Assembly by October 31 of the year following the end of the audit period. The cost of reasonable expenses incurred by the Auditor General in performing the obligations under this section shall be reimbursed by the One Call System. The fees shall not be inconsistent with those of commercial auditing firms for similar work.

(b) The Auditor General, for the purposes set forth in subsection (a), and any contractor, excavator, facility owner or member of the One Call System shall have the right during regular business hours to inspect and copy any record, book, account, document or any other information relating to the provision of one call services by the One Call System, at the cost determined by the board of directors.

(c) The One Call System shall submit an annual report to its members, and a copy of the report shall be submitted to the Auditor General.

(d) The One Call System shall cause a financial audit to be performed annually by a qualified auditing firm within this Commonwealth.

(7 amended Oct. 30, 2017, P.L.806, No.50)

Section 7.1. (7.1 deleted by amendment Nov. 29, 2006, P.L.1593, No.181)

Compiler's Note: Section 8 of Act 38 of 1991, which amended section 7.1(b) and (c), provided that Act 38 shall expire December 31, 1996.

Section 7.2. (7.2 repealed Oct. 30, 2017, P.L.806, No.50)

Section 7.3. (7.3 repealed Dec. 12, 1991, P.L.364, No.38)

Section 7.4. (7.4 repealed Dec. 19, 1996, P.L.1460, No.187)

Section 7.5. (7.5 repealed Nov. 30, 2004, P.L.1567, No.199)

Section 7.6. (7.6 deleted by amendment Nov. 29, 2006, P.L.1593, No.181)

Section 7.7. (7.7 renumbered 39 and amended Nov. 29, 2006, P.L.1593, No.181)

Section 7.8. (a) A damage prevention committee shall be established as follows:

(1) The committee shall consist of the following members, appointed by the commission:

(i) The chairman or his designee from the commission's professional staff.

(ii) The Secretary of Transportation or the secretary's designee.

(iii) The president of the One Call System or his designee from the One Call System professional staff.

(iv) One representative from each of the following nonmunicipally owned or affiliated facility owner industries:

electric, natural gas or petroleum pipelines, telephone, water or wastewater and cable television, nominated by facility owners or affiliated organizations.

(v) Three representatives of excavators, nominated by excavators or affiliated organizations.

(vi) One representative of municipal governments, nominated by municipal governments or affiliated organizations.

(vii) One representative of municipal authorities, nominated by municipal authorities or affiliated organizations.

(2) A person appointed to the committee must have expertise within the operation of this act.

(3) A nomination under clause (1)(iv), (v), (vi) and (vii) shall be forwarded to the secretary of the commission. The executive director of the commission shall provide recommended candidates to the commission for approval.

(4) Except for an unexpired term or for committee members under clause (1)(i) and (iii), the following shall apply:

(i) An appointment to the committee shall begin January 1.

(ii) Except for initial terms under clause (5), a committee member's term shall be for a term of three years.

(5) The initial term of committee members shall be as follows:

(i) Two representatives of facility owners shall serve three years, one representative shall serve two years and two representatives shall serve one year.

(ii) One representative of excavators shall serve three years, one representative shall serve two years and one representative shall serve one year.

(iii) The representative of municipal governments shall serve two years.

(iv) The representative of municipal authorities shall serve three years.

(6) The commission member shall serve as the chairman of the committee and shall be a nonvoting member, except if the chairman's vote is necessary to break a tie. The chairman's attendance shall not be counted to establish a quorum.

(7) At least seven members of the committee who are present shall constitute a quorum for the transaction of business. A simple majority vote of the committee members present at a meeting shall be deemed to be the position of the committee.

(b) The committee shall meet regularly to carry out the following purposes:

(1) Review a report of an alleged violation of this act and damage prevention investigator findings and recommendations.

(2) Issue a warning letter to a person as deemed appropriate by the committee or as recommended by the damage prevention investigator.

(3) Issue an informal determination that imposes an administrative penalty.

(4) Require a person to attend a damage prevention educational program.

(5) Issue an informal determination that modifies or dismisses a recommendation of committee staff.

(c) The following shall apply to alleged violations:

(1) A person determined, in a report issued by a damage prevention investigator, to have committed an alleged violation shall do one of the following:

(i) Provide a written acknowledgment of the findings and administrative penalty contained in the report issued by the damage prevention investigator to the committee.

(ii) Appear before the commission to present its position.

(2) A person who is subject to an informal determination of the committee may accept or reject the result. If an informal determination is rejected, the matter shall be returned to the damage prevention investigator for further action, if appropriate, including referring the matter to the commission prosecutor staff for the purpose of issuing a formal complaint.

(d) Except for alleged violations involving injury or death, the provisions of subsection (c) may be applied in advance or instead of filing a formal complaint against a person determined, in a report issued by a damage prevention investigator, to have committed an alleged violation. An informal determination of the committee shall be binding on the commission unless the person rejects the informal determination.

(e) The committee shall have the following additional duties:

(1) Upon the request of the commission, the committee shall hold a special meeting to advise the commission on a matter related to damage prevention for underground facilities under this act.

(2) As soon as practicable after establishment, the committee, with input from the One Call System, shall develop and implement bylaws. The bylaws shall:

(i) Establish a schedule for the frequency of regular meetings.

(ii) Delineate the committee's practice and procedure concerning the performance of duties assigned under this act and commission orders and regulations.

(iii) Be approved by the commission.

(3) Submit an annual report containing relevant damage prevention data to the commission, the Committee on Consumer Protection and Professional Licensure of the Senate and the Committee on Consumer Affairs of the House of Representatives.

(f) Except for willful misconduct, members of the committee shall be immune, individually and jointly, from civil liability for an act or omission done or made in performance of the members' duties while serving as members of the committee.

(g) The commission shall have the following powers to carry out the purposes of this act:

(1) To employ individuals.

(2) To issue orders.

(3) To promulgate regulations. If the commission promulgates regulations that limit reporting to a specific type of incident, including contact with a line, damage to a line or line coating, personal injury, third-party damage and failure to comply with this act, the commission may consider the resources available for enforcement and other factors.

(4) For one year following the effective date of this section, to promulgate temporary regulations. Regulations under this clause shall:

(i) Expire no later than two years following the effective date of this section.

(ii) Be exempt from all of the following:

(A) Sections 201, 202 and 203 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(B) The act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(7.8 added Oct. 30, 2017, P.L.806, No.50)

Section 7.9. (a) Program costs for commission enforcement of this act shall be included in the commission's proposed budget and shall be subject to the review and approval of the Governor and the General Assembly as described under 66 Pa.C.S.

§ 510(a) (relating to assessment for regulatory expenses upon public utilities). The assessment of the commission's program costs for commission enforcement of this act shall not include Federal and State funds provided for the enforcement of this act and shall be allocated in the following manner:

(1) Eighty percent of the program costs shall be included within the amount assessed to public utilities under 66 Pa.C.S. § 510.

(2) Twenty percent of the program costs shall be assessed as a fee upon the One Call System, with the fee to be paid to the commission. The One Call System's board of directors shall determine the manner in which the fee may be recovered from facility owners, excavators, designers and other involved persons, provided that the One Call System's board of directors' manner of recovery may not include facility owners that are public utilities.

(b) (Reserved).

(7.9 added Oct. 30, 2017, P.L.806, No.50)

Section 7.10. (a) The commission may issue a warning and order requiring compliance with this act and may levy an administrative penalty for a violation of this act. A warning, order or penalty shall be served on the person or entity violating this act at the person's last known address. A party aggrieved by the imposition of an order or administrative penalty imposed by the commission may appeal the order or penalty as provided under 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

(b) The following shall apply:

(1) A person or entity violating this act may be subject to:

(i) an administrative penalty of not more than two thousand five hundred dollars (\$2,500) per violation; or

(ii) if the violation results in injury, death or property damage of twenty-five thousand dollars (\$25,000) or more, an administrative penalty of not more than fifty thousand dollars (\$50,000).

(2) The commission and committee shall consider the following factors in determining the administrative penalty to be assessed:

(i) The history of the party's compliance with the act prior to the date of the violation.

(ii) The amount of injury or property damage caused by the party's noncompliance.

(iii) The degree of threat to the public safety and inconvenience caused by the party's noncompliance.

(iv) The party's proposed modification to internal practices and procedures to ensure future compliance with statutes and regulations.

(v) The degree of the party's culpability.

(vi) Other factors as may be appropriate considering the facts and circumstances of the incident.

(c) An administrative penalty recovered under this section shall be payable to the commission and collected in the manner provided for by law.

(d) This act shall not affect a civil remedy for personal injury or property damage, except as provided for under this act.

(e) The commission may issue a subpoena, on application of an attorney responsible for representing the Commonwealth in actions before the commission, for the purpose of investigating an alleged violation of this act. The commission shall have the

power to subpoena witnesses and compel the production of books, records, papers and documents.

(f) No provision of this act shall be construed or interpreted to do any of the following:

(1) Affect the ability of a district attorney or the Attorney General to investigate or file a claim for the same conduct.

(2) Deprive a governmental agency, including a law enforcement agency, the Auditor General and a district attorney, of any jurisdictional power or duty.

(g) A facility owner may petition a court of competent jurisdiction to enjoin excavation or demolition work conducted in violation of this act. Local law enforcement or emergency management personnel may, in the interest of public safety, order an excavator on a work site to stop further excavation if the excavation is being conducted in violation of this act.

(7.10 added Oct. 30, 2017, P.L.806, No.50)

Section 8. The One Call System shall have the authority to design, establish and administer a voluntary payment dispute resolution process which may be used by excavators, facility owners, designers, project owners and other involved persons. The process shall provide for dispute resolution panels selected from among a list of representatives of stakeholder groups, including facility owners, excavators, designers and regulators. The process established under this section may not be used to settle or resolve alleged violations of this act nor may involve any issues related to the commission's enforcement activities.

(8 amended Oct. 30, 2017, P.L.806, No.50)

Section 9. Except as otherwise provided for by this act, persons shall use their best efforts to comply with the Common Ground Alliance best practices.

(9 added Nov. 29, 2006, P.L.1593, No.181)

Section 10. No person shall intentionally remove or tamper with a marking provided for under this act.

(10 added Nov. 29, 2006, P.L.1593, No.181)

Section 11. Nothing in this act shall impair the rights or immunities provided to political subdivisions under 42 Pa.C.S. Ch. 85 Subch. C (relating to actions against local parties) or any other State law.

(11 added Nov. 29, 2006, P.L.1593, No.181)

Section 39. This act shall expire on December 31, 2024.

(39 amended Oct. 30, 2017, P.L.806, No.50)

Section 40. This act shall take effect in one hundred twenty days.

(40 renumbered from 8 Nov. 29, 2006, P.L.1593, No.181)