

The Vermont Statutes Online

Title 30: Public Service

Chapter 86: Underground Utility Damage Prevention System

§ 7001. Definitions

In this chapter:

(1) "Commission" means the Public Utility Commission under section 3 of this title.

(2) "Company" means any public utility, municipality, or person that supplies gas, electricity, hot water, steam, or telecommunications service and that maintains underground utility facilities, and any cable television company operating a cable television system as defined in section 501 of this title that maintains underground utility facilities.

(3) "Damage" includes the substantial weakening of structural or lateral support of an underground utility facility; penetration or destruction of any underground utility facility's protective coating, housing, or device; or the partial or complete severance of any underground utility facility.

(4) "Excavation activities" means any activities that will disturb the subsurface of the earth or could damage underground utility facilities and that may involve the removal of earth, rock, or other materials in the ground or the demolition of any structure by the discharge of explosives or the use of powered or mechanized equipment, including digging, trenching, blasting, boring, drilling, hammering, post driving, wrecking, razing, tunneling, or pavement or concrete slab removal within 100 feet of an underground utility facility. Excavation activities shall not include the tilling of the soil for agricultural purposes, routine home gardening with hand tools outside easement areas and public rights-of-way, activities relating to routine public highway maintenance, or the use of hand tools by a company, or the company's agent or a contractor working under the agent's direction, to locate or service the company's facilities, provided the company has a written damage prevention program.

(5) "Person" means any individual, trust, firm, joint stock company, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of the State, or any interstate body.

(6) "Public agency" means the State or any political subdivision thereof, including any governmental agency.

(7) "Approximate location of underground utility facilities" means a strip of land extending not more than 18 inches on either side of the underground utility facilities.

(8) "System" means the public utility underground facility damage prevention system referred to in section 7002 of this title.

(9) "Underground utility facility" or "facility" means any pipe, conduit, wire, or cable located beneath the surface of the earth and maintained by a company, including the protective covering of the pipe, conduit, wire, or cable, as well as any manhole, vault, pedestal, or component maintained by a company.

(10) "Premark" means to identify the general scope of excavation activities using white paint, stakes, or other suitable white markings, in a manner that will enable the operators of the underground utility facilities to know the boundaries of the proposed excavation activities.

(11) "Powered or mechanized equipment" means equipment that is powered or energized by any motor, engine, or hydraulic or pneumatic device and that is used for excavation or demolition work.

(12) "Hand tools" means tools powered solely by human energy.

(13) "Verified" means the location and depth have been visually determined using careful and prudent excavating techniques such as hand digging, water excavation, or other safe means.

(14) "Damage prevention program" means a program established to ensure employees involved in excavation activities are aware of and utilize appropriate and safe excavating practices. (Added 1987, No. 86, § 1, eff. Jan. 1, 1988; amended 1993, No. 118 (Adj. Sess.), § 1; 2001, No. 51, § 1; 2003, No. 56, § 56, eff. June 4, 2003; 2007, No. 145 (Adj. Sess.), § 1; 2017, No. 53, § 10; 2019, No. 31, § 9.)

§ 7002. Public Utility Underground Facility Damage Prevention System

Each company shall be a member of and participate in the Public Utility Underground Facility Damage Prevention System as designated by the Commission unless granted an exemption by the Commission after opportunity for hearing. The System shall operate during regular business hours throughout the year, except Saturdays, Sundays, and legal holidays. The System shall receive notices of proposed excavation activities and transmit the notices to member companies whose facilities may be affected. The cost for operation of the System shall be apportioned equitably among member companies. (Added 1987, No. 86, § 1, eff. Jan. 1, 1988; amended 1993, No. 118 (Adj. Sess.), § 2; 1999, No. 157 (Adj. Sess.), § 15.)

§ 7003. Rulemaking

The Commission shall adopt rules, pursuant to 3 V.S.A. chapter 25 relative to:

- (1) minimum requirements for the operation of the System, including notification procedures and the reporting of underground utility facility locations;
- (2) procedures for the investigation of complaints;
- (3) emergency situations;
- (4) uniform standards for the marking of the approximate location of underground utility facilities;

(5) uniform standards for the future installation of underground utility facilities, including the following:

- (A) color coding of facilities;
- (B) depth requirements for the laying of facilities;
- (C) subsurface marking of facilities;
- (D) surface marking of facilities;
- (E) the filing of as-built plans of facilities with municipalities; and
- (F) capability for location of facilities by sensors;

(6) standards for the granting of exemptions under section 7002 of this title; and

(7) situations where the premarks cannot be found. (Added 1987, No. 86, § 1; amended 1993, No. 118 (Adj. Sess.), § 3; 2019, No. 31, § 10.)

§ 7004. Notice of excavation activities

(a) No person or company shall engage in excavation activities, except in an emergency situation as defined by the Commission, without premarking the proposed area of excavation activities and giving notice as required by this section.

(b) Prior to notifying the System, the person shall premark the area of proposed excavation activities in a manner that will enable operators of underground facilities to identify the boundaries of the proposed excavation activities.

(c) At least 48 hours, excluding Saturdays, Sundays, and legal holidays, but not more than 30 days before commencing excavation activities, each person required to give notice of excavation activities shall notify the System referred to in section 7002 of this title. Such notice shall set forth a reasonably accurate and readily identifiable description of the geographical location of the proposed excavation activities and the premarks.

(d) Notice to the System may be in writing or by telephone. For purposes of this section, the System shall provide a toll-free telephone number.

(e) Notice of excavation activities shall be valid for an excavation site until one of the following occurs:

- (1) the excavation is not completed within 30 days of the notification;
- (2) the markings become faded, illegible, or destroyed; or

(3) the company installs new underground facilities in a marked area still under excavation. (Added 1987, No. 86, § 1, eff. Jan. 1, 1988; amended 1993, No. 118 (Adj. Sess.), § 4; 2001, No. 51, § 2; 2007, No. 145 (Adj. Sess.), § 2; 2019, No. 31, § 11.)

§ 7005. Notification by System

Upon receiving notice of excavation activities, the System shall notify all member companies whose facilities may be affected. An adequate record shall be maintained by the System to document compliance with requirements of this chapter. (Added 1987, No.

86, § 1, eff. Jan. 1, 1988; amended 1993, No. 118 (Adj. Sess.), § 5.)

§ 7006. Marking of underground utility facilities

A company notified in accordance with section 7005 of this title shall, within 48 hours, exclusive of Saturdays, Sundays, and legal holidays, of the receipt of the notice, mark the approximate location of its underground utility facilities in the area of the proposed excavation activities; provided, however, if the company advises the person that the proposed excavation area is of such length or size that the company cannot reasonably mark all of the underground utility facilities within 48 hours, the person shall notify the company of the specific locations in which the excavation activities will first occur and the company shall mark facilities in those locations within 48 hours and the remaining facilities within a reasonable time thereafter. A company and an excavator may by agreement fix a later time for the company's marking of the facilities, provided the marking is made prior to excavation activities. For the purposes of this chapter, the approximate location of underground facilities shall be marked with stakes, paint, or other physical means as designated by the Commission. (Added 1987, No. 86, § 1, eff. Jan. 1, 1988; amended 1993, No. 118 (Adj. Sess.), § 6.)

§ 7006a. Maintenance of underground utility facility markings

After a company has marked its underground facilities in accordance with section 7006 of this title, the excavator shall be responsible for maintenance of the designated markings. In the event said markings are obliterated, destroyed, or removed, the person engaged in excavation activities shall notify the System referred to in section 7002 of this title that remarking is needed. The System shall then notify all member companies whose facilities may be affected. The company shall within 48 hours, exclusive of Saturdays, Sundays, and legal holidays, following receipt of the notice, remark the location of its underground utility facilities. (Added 1993, No. 118 (Adj. Sess.), § 7.)

§ 7006b. Excavation area precautions

Any person engaged in excavating activities in the approximate location of underground utility facilities marked pursuant to section 7006 of this title shall take reasonable precautions to avoid damage to underground utility facilities, including any substantial weakening of the structural or lateral support of such facilities or penetration, severance, or destruction of such facilities. The person engaged in excavation activities shall expose underground facilities to verify their location and depth, in a safe manner, at each location where the work will cross a facility and at reasonable intervals when paralleling an underground facility. Powered or mechanized equipment may only be used within the approximate location where the facilities have been verified. (Added 1993, No. 118 (Adj. Sess.), § 8; amended 2001, No. 51, § 3; 2007, No. 145 (Adj. Sess.), § 3; 2019, No. 31, § 12.)

§ 7007. Notice of damage

When any underground utility facility is damaged during excavation activities, the excavator shall immediately notify the affected company. Under no circumstances shall the excavator backfill or conceal the damaged area until the company inspects and repairs the damage, provided that the excavator shall take reasonable and prudent actions to protect

the public from serious injury from the damaged facilities until the company or emergency response personnel arrive at the damaged area. An excavator who causes damage to a pipeline that results in a release of natural or other gas or hazardous liquid shall promptly report the release to emergency responders by calling 911. (Added 1987, No. 86, § 1, eff. Jan. 1, 1988; amended 1993, No. 118 (Adj. Sess.), § 9; 2019, No. 31, § 13.)

§ 7008. Penalties

(a) Vermont Digsafe Program. Any person or company who violates any provisions of section 7004, 7006, 7006a, 7006b, or 7007 of this title shall be subject to a civil penalty of not more than \$500.00 for the first offense, not more than \$1,000.00 for the second offense within one year of the date of the first offense, not more than \$1,500.00 for the third offense within one year of the first offense, and not more than \$5,000.00 for the fourth or subsequent offense within one year of the date of a previous offense, in addition to any other remedies or penalties provided by law or any liability for actual damages. For the purposes of this subsection, "the date of the first offense" means the date on which the violation occurred, not the date on which the adjudication of the offense resulted.

(b) [Repealed.]

(c) If underground facilities are damaged because a company has not marked them as required by section 7006 or 7006a, the company shall be subject to a civil penalty as provided in this section and, in addition, shall be liable for any damages incurred by the excavator as a result of the company's failure to mark the facilities.

(d) All penalties recovered in any such actions shall be paid into the General Fund of the State. The Commission shall have jurisdiction over all actions brought pursuant to this chapter.

(e) Any person who violates any provisions of sections 7004 through 7007 of this title as to an underground gas distribution or transmission facility shall also be subject to the civil penalties described in section 2816 of this title. However, a person who has been assessed a civil penalty pursuant to section 2816 of this title shall not be subject to the payment of an assessed penalty under the provisions of this section for the same violation. (Added 1987, No. 86, § 1, eff. Jan. 1, 1988; amended 1993, No. 118 (Adj. Sess.), § 10; 2007, No. 145 (Adj. Sess.), § 4.)