

## STATE OF MASSACHUSETTS CHAPTER 82 SECTION 40

### Section 40: Definitions applicable to Secs. 40A to 40E

**Section 40.** The following words, as used in this section and sections 40A to 40E, inclusive, shall have the following meanings:—

"Company", natural gas pipeline company, petroleum or petroleum products pipeline company, public utility company, cable television company, municipal traffic signal department, and municipal utility company or department that supply gas, electricity, telephone, communication or cable television services or private water companies within the city or town where such excavation is to be made.

"Description of excavation location", such description shall include the name of the city or town, street, way, or route number where appropriate, the name of the streets at the nearest intersection to the excavation, the number of the buildings closest to the excavation or any other description, including landmarks, utility pole numbers or other information which will accurately define the location of the excavation.

"Emergency", a condition in which the safety of the public is in imminent danger, such as a threat to life or health or where immediate correction is required to maintain or restore essential public utility service.

"Excavation", an operation for the purpose of movement or removal of earth, rock or the materials in the ground including, but not limited to, digging, blasting, augering, backfilling, test boring, drilling, pile driving, grading, plowing in, hammering, pulling in, jacking in, trenching, tunneling and demolition of structures.

"Excavator", any entity including, but not limited to, a person, partnership, joint venture, trust, corporation, association, public utility, company or state or local government body which performs excavation operations.

"Marking standards", the methods by which a company designates its facilities in accordance with standards established by the Common Ground Alliance and the American Public Works Association.

"Non-mechanical means", excavation using any device or tool manipulated by human power, including air vacuum, air blowing or similar methods of excavation designed to minimize direct contact with utilities.

"Premark", to delineate the general scope of the excavation or boring on the paved surface of the ground using white paint, or stakes or other suitable white markings on nonpaved surfaces. No premarking shall be acceptable if such marks can reasonably interfere with traffic or pedestrian control or are misleading to the general public. Premarking shall not be required of any continuous excavation that is over 500 feet in length.

"Professional land surveyor", a professional land surveyor as defined in section 81D of chapter 112.

"Safety zone", a zone designated on the surface by the use of standard color-coded markings which contains the width of the facilities plus not more than 18 inches on each side.

"Standard color-coded markings", red - electric power lines, cables, conduit or light cables; yellow - gas, oil, street petroleum, or other gaseous materials; orange - communications cables or conduit, alarm or signal lines; blue - water, irrigation and slurry lines; green - sewer and drain lines; white - premark of proposed excavation.

"System", the underground plant damage prevention system as defined in section 76D of chapter 164.

#### **Section 40A: Excavations; notice**

**Section 40A.** No excavator installing a new facility or an addition to an existing facility or the relay or repair of an existing facility shall, except in an emergency, make an excavation, in any public or private way, any company right-of-way or easement or any public or privately owned land or way, unless at least 72 hours, exclusive of Saturdays, Sundays and legal holidays but not more than 30 days before the proposed excavation is to be made, such excavator has premarked not more than 500 feet of the proposed excavation and given an initial notice to the system. Such initial notice shall set forth a description of the excavation location in the manner as herein defined. In addition, such initial notice shall indicate whether any such excavation will involve blasting and, if so, the date and the location at which such blasting is to occur.

Any professional land surveyor working on a preliminary design for a new facility or renovation where excavation is necessary shall: (i) premark the proposed excavation; and (ii) provide initial notice to the system.

The notice requirements shall be waived in an emergency as defined herein; provided, however, that before such excavation begins or during a life-threatening emergency, notification shall be given to the system and the initial point of boring or excavation shall be premarked. The excavator shall ensure that the underground facilities of the utilities in the area of such excavation shall not be damaged or jeopardized.

In no event shall any excavation by blasting take place unless notice thereof, either in the initial notice or a subsequent notice accurately specifying the date and location of such blasting shall have been given and received at least 72 hours in advance, except in the case of an unanticipated obstruction requiring blasting when such notice shall be not less than four hours prior to such blasting. If any such notice cannot be given as aforesaid because of an emergency requiring blasting, it shall be given as soon as may be practicable but before any explosives are discharged.

#### **Section 40B: Designation of location of underground facilities**

**Section 40B.** Within 72 hours, exclusive of Saturdays, Sundays and legal holidays, from the time the initial notice is received by the system or at such time as the company and the excavator or professional land surveyor agree, such company shall respond to the initial notice or subsequent notice by designating the location of the underground facilities within 15 feet in any direction of the premarking so that the existing facilities are to be found within a safety zone. Such safety zone shall be so designated by the use of standard color-coded markings. The providing of such designation

by the company shall constitute prima facie evidence of an exercise of reasonable precaution by the company as required by this section; provided, however, that in the event that the excavator or professional land surveyor has given notice as aforesaid at a location at which because of the length of excavation the company cannot reasonably designate the entire location of its facilities within such 72 hour period, then such excavator or professional land surveyor shall identify for the company that portion of the excavation which is to be first made and the company shall designate the location of its facilities in such portion within 72 hours and shall designate the location of its facilities in the remaining portion of the location within a reasonable time thereafter. When an emergency notification has been given to the system, the company shall make every attempt to designate its facilities as promptly as possible. A company shall conduct periodic audits to ensure: (i) the accuracy of the designated location and marking of its facilities; and (ii) its adherence to marking standards.

**Section 40C: Excavator's responsibility to maintain designation markings; damage caused by excavator**

**Section 40C.** After a company has designated the location of its facilities at the location in accordance with section 40B, the excavator shall be responsible for maintaining the designation markings at such locations, unless such excavator requests remarking at the location due to the obliteration, destruction or other removal of such markings. The company shall then remark such location within 24 hours following receipt of such request.

When excavating in close proximity to the underground facilities of any company when such facilities are to be exposed, non-mechanical means shall be employed, as necessary, to avoid damage in locating such facility and any further excavation shall be performed employing reasonable precautions to avoid damage to any underground facilities including, but not limited to, any substantial weakening of structural or lateral support of such facilities, penetration or destruction of any pipe, main, wire or conduit or the protective coating thereof, or damage to any pipe, main, wire or conduit.

If any damage to such pipe, main, wire or conduit or its protective coating occurs, the company shall be notified immediately by the excavator responsible for causing such damage.

The making of an excavation without providing the notice required by section 40A with respect to any proposed excavation which results in any damage to a pipe, main, wire or conduit, or its protective coating, shall be prima facie evidence in any legal or administrative proceeding that such damage was caused by the negligence of such person.

**Section 40D: Local laws requiring excavation permits; public ways**

**Section 40D.** Nothing in this section shall affect or impair local ordinances or by-laws requiring a permit to be obtained before excavation in a public way or on private property; but notwithstanding any general or special law, ordinance or by-law to the contrary, to the extent that any permit issued under the provisions of the state building code or state fire code requires excavation by an excavator on a public way or on private property, the permit shall not be valid unless the excavator notifies the system as required pursuant to sections 40 and 40A, before the commencement of the excavation, and has complied with the permitting requirements of chapter 82A.

**Section 40E: Violations of Secs. 40A to 40E; punishment**

**Section 40E.** Any person or company found by the department of public utilities, after a hearing, to have violated any provision of sections 40A to 40E, inclusive, shall be fined \$1,000 for the first offense and not less than \$5,000 nor more than \$10,000 for any subsequent offense within 12 consecutive months as set forth by the rules of said department; provided, however, that nothing herein shall be construed to require forfeiture of any penal sum by a state or local government body for violation of section 40A or 40C; and provided, further, that nothing herein shall be construed to require the forfeiture of any penal sum by a residential property owner for the failure to premark for an excavation on such person's residential property. The department of public utilities may require any person or company not in compliance with sections 40A to 40E, inclusive, to complete a "Dig Safe" training program in lieu of a fine for a first offense.