



# **Sixth Report to the Governor and the General Assembly Of Maryland**

**MARYLAND UNDERGROUND FACILITIES  
DAMAGE PREVENTION AUTHORITY**

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January 2017



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DAMAGE PREVENTION AUTHORITY**

7223 PARKWAY DRIVE, SUITE 100  
HANOVER, MARYLAND 21076  
(410)782-2102



January 2017

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*Chair*

Vincent C. Healy  
*Vice Chair*

Matthew C. Ruddo  
*Treasurer*

Veronica L. Davila-Steele  
*Secretary*

James J. DiPietro  
Walter F. Gainer  
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Charles B. McCadden  
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To the Honorable Lawrence J. Hogan, Jr.  
Governor of Maryland

The Honorable Thomas V "Mike" Miller and  
The Honorable Michael E. Busch  
Presiding Officers of the Maryland General Assembly

Members of the General Assembly of Maryland

Gentlemen and Ladies:

Pursuant to the Public Utilities Article of the Annotated Code of Maryland, § 12-144 - Annual Reports, I hereby, as the 2017 Chair of the Maryland Underground Facilities Damage Prevention Authority, submit this Sixth Annual Report to you. This document serves as an outline of the Authority's activities and accomplishments for the 2016 calendar year.

Sincerely,

Thomas L. Hastings  
Chairman, MUFDP



## **MISSION STATEMENT**

The Authority seeks to protect underground facilities of owners in the State of Maryland from destruction, damage or dislocation to prevent:

- death or injury to individuals;
- property damage to private and public property; and
- the loss of services provided to the general public.

To accomplish this, the Authority seeks to promote, enhance, and assist the State of Maryland in enforcing the Maryland underground utility damage prevention law and furthering programs through efforts that include consistent enforcement, effective public education, and the constant knowledge that public safety through reduced damages is our prime concern.



## **Executive Summary**

- The Maryland Underground Facilities Damage Prevention Authority (“The Authority”) was created by the Maryland General Assembly in 2010 to enforce the Miss Utility Law (Annotated Code of MD, Public Utilities, Title 12). This legislation was required by actions taken by the Federal Government which ordered all States and U.S. Territories to create a One-Call Compliance Program. The Authority seeks to protect all 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.
- The Maryland Court of Special Appeals upheld the Authority’s constitutionality, and as such, affirmed it is an Agency in the Executive Branch of Maryland State Government. The ruling also established that the Authority must utilize three (3) standards when adjudicating Probable Violators. To comply, the Authority developed and adopted a Standardized Fining Matrix (SFM), which takes into account the three (3) standards.

- The Authority was deemed Adequate by PHMSA in the first nation-wide “Adequacy” assessment review by the Federal oversight agency. As a result, the Maryland MUFDDPA program can continue to review and assess fines and penalties without Federal intervention. However, PHMSA pointed to two deficient areas in the Maryland program that will need to be addressed in the next legislative re-write. 1) Exemptions - There should be no exemptions to the program’s requirements; and 2) Measurables - Require mandatory damage reporting in Maryland in order to track the program’s impact on safety and damage prevention.
- The Authority met twelve (12) times during the 2016 Calendar year. The Authority Board reviewed sixty-one (61) probable violations during this period and assessed and collected \$78,312.50 in fines and recommended Title XII Damage Prevention Safety training to all companies in violation of the statute. There were six (6) hearings were held by the Authority in 2016, and six (6) pending due to the Authority’s moratorium on hearings pending the outcome of the Court of Special Appeals ruling.
- The Authority has received a \$97,000 State Based Program Federal Grant from the Pipeline & Hazardous Materials Safety Administration (PHMSA) in 2016. This is the fifth such award in the Authority’s seven (7) year history.
- The Authority has participated in eighteen 18 presentations and conferences and trained over 3000 industry workers on the Miss Utility law in Maryland during the 2016 calendar year. This reflects a 54% increase over 2015 in the number of industry workers trained in the TITLE XII requirements.
- The Authority has increased its staff and is hiring a permanent part-time Investigator to assist in the up-tick of NPV’s currently being filed. The Authority moved and upgraded to a larger accessible office space and continues to see a steady increase in probable violations across the State of Maryland, as well as voluntary training requests from non- violating companies.

- The Authority's emphasis will continue to focus on enforcement as proscribed by changes to the Federal Rules governing the State-based Compliance programs. These changes necessitated a permanent funding source for the Authority's day-to-day operations. As a result, HB696 and SB480 were introduced and passed overwhelmingly during the 2016 Legislative Session. The measure created a permanent and sustainable funding source for the Authority from private sector stakeholders. The Authority does not and has never sought grants or aid from the State of Maryland.

# MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY

## MEMBERS AND STAFF

<u>MEMBER</u>	<u>REPRESENTING</u>	<u>ORGANIZATION</u>
Thomas L. Hastings, Chair*	Underground Utility Locators	One Call Concepts Locating Services, Inc.
Vincent C. Healy, Vice Chair*	Underground Facility Owners	Verizon
Matthew C. Ruddo, Treasurer*	One Call Centers	One Call Concepts, Inc.
Veronica Davila-Steele, Secretary*	General Public	Take Two Hair & Skin Salon
James J. DiPietro**	Maryland Association of Counties	Anne Arundel County Dept. of Public Works
Walter F. Gainer**	Associated Utility Contractors of MD	W.F. Wilson & Sons
Jeffrey S. Garner*	Maryland Municipal League	City of LaPlata Public Works Department
Charles B. McCadden**	Underground Facility Owners	BGE
George E. Taylor**	Public Works Contractors Association	Taylor Utilities, Inc.

## STAFF

James A. Barron Executive Director	MD Underground Facilities Damage Prevention Authority
Susan Ann Mary Stroud Assistant to the Executive Director	MD Underground Facilities Damage Prevention Authority
Bruce C. Bereano Consultant	Office of Bruce C. Bereano

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\* Serving last term, expiring October 1, 2017.

\*\* May serve one additional term.





## **SUMMARY OF AUTHORITY** **ACTIVITIES**

### **Calendar Year 2016**

Since January 1, 2016, the Authority, which is appointed by the Governor, has conducted the following activities and actions. The Authority has held 12 publically announced meetings at the Miss Utility One Call Center, Conference Room, Suite 104 Hanover, Maryland 21076. All meeting dates were announced and posted in the General Assembly Notice of Meetings document and on the Authority website, in compliance with the Open Meetings Act. At the January 7, 2016 meeting, the Authority elected the following new officers: Thomas L. Hastings as Chair; Vincent C. Healy as Vice-Chair; Matthew C. Ruddo as Treasurer and Veronica Davila-Steele, Secretary.

### **GRANTS**

In the Fall of 2015 the Authority again submitted a request for the U. S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration's (PHMSA) 2016 State Damage Prevention Grant. These State program grants can amount up to \$100,000.00. The request was submitted to secure funds to continue the growing, staffing requirements and IT upgrades and outreach efforts for the Authority. The Authority was awarded \$97,000, for the 2016 State Damage Prevention Grant submittal from the Pipeline and Hazardous Materials Safety Administration (PHMSA) and is due to receive the first distribution of the award in January of 2017. The second of the award is expected in May of 2017. The 2016 Grant Year runs from September 1, 2016 to September 29, 2017. To-date the Authority has received \$442,000 in federal grants and \$200,000 in private stakeholder grants.

## **BOARD MEMBER CHANGES**

Jeffrey Garner the Town of LaPlata, Prince Georges County Department of Public Works was appointed by Governor Hogan to represent municipal stakeholders via the Maryland Municipal League (MML). In addition, Charles C. McCadden, who is employed by BGE in the Damage Prevention Division, was appointed to replace the term limited Kevin Woolbright with the WSSC. This seat is one of the two (2) underground facility owner positions required by statute. Walter F. Gainer with W.R. Wilson & Sons, was appointed to represent the Associated Utility Contractors of Maryland, replacing the term-limited Arthur Bell, Jr. with Burgemeister Bell; and James J. DiPietro was appointed to represent the Maryland Association of Counties. Mr. DiPietro is a Supervisor with the Anne Arundel County Department of Public Works.

## **FEDERAL COMPLIANCE ACHIEVED with CAVEATS**

After the announcement of the Final Rule (49 FR 43835- 43869) (See Appendix D), the Authority meet with State Program officials from PHMSA who examined and graded the Maryland State Program, as they did all one-call laws around the country, in order to assess their efficacy or “Adequacy”. Those States deemed “Inadequate” face the possibility of a take-over by PHMSA on a case-by-case basis, or entirely. As such, PHMSA would have the ability to levy Federal Civil Penalties from \$200,000 per occurrence for each day the violation continues, with the maximum penalty being \$2,000,000. Those States, who are not deemed “Adequate” within five (5) years, will face a 4% reduction to the PHMSA State Based grant funding.

The Maryland Authority Program received notice from PHMSA that their program was judged “Adequate” (see Appendix D) and therefore can continue to oversee its own damage prevention programs, including fine assessments and judgements. PHMSA intends to re-assess all state damage prevention programs on an annual basis henceforth. The Authority was made aware during the assessment that there were two (2) areas of “inadequacy” in the Maryland program.

The first deficiency noted was that of allowing exemptions to the One-Call requirement. Currently, the Maryland program allows an exemption for homeowners, who are hand-digging on their own property. This exemption was made part of the Title XII law during the 2010 re-write. In order to qualify for future grant dollars, the Maryland program will be required to remove any exemptions to the law; which will be addressed during the next legislative re-write.

The second deficiency, was the lack of empirical data regarding damages to underground facilities in the State of Maryland. Current law does not require mandatory reporting of damages, which the Federal Government (PHMSA) is pursuing in all 50 states and the U.S. territories. The data derived from mandatory reporting would be used as a benchmark to ascertain program effectiveness. The Maryland program is a complaint based model, therefore effectiveness can only be judged by trends in reporting violations and types of Title XII infractions.

### **PERMANENT FUNDING SOURCE ACQUIRED**

During the 2016 PHMSA grant application cycle, all State Damage Prevention Programs were put on notice that reliance on federal grant funds for operating expenses would no longer be acceptable and as a result the Authority needed to move away from using grant funds for staff and office support to a more robust approach to education, tracking and enforcement program. This change required the development of software modules to enhance tracking, provide on-line training and other forms of outreach as proscribed in the 9<sup>th</sup> Element of the 2006 PHMSA Pipes Act. All of which is in the development stage. During the 2016 session of the Maryland General Assembly, Delegate Dereck Davis and Senator John Astle introduced companion pieces of legislation that authorized the Authority to receive private independent funding on a permanent basis. HB696 and SB480 allowed up to a five (5) cent surcharge on each "Miss Utility" ticket filed in the State prior to any excavation or demolition activities. The only exemptions to the new funding program were MML and MACo members. Both the Maryland House Delegates and State Senate voted unanimously to support of The Authority's legislation. The funding program concept was developed in a consensus-based process prior to introduction. The Authority began receiving funds in October of 2016 which averages \$20,000.00 per month.

## **STANDARDIZATION of REVIEWS**

As a result of a ruling by the Maryland Court of Special Appeals, the Authority has developed a Standardized Fining Matrix (SFM) (See Appendix C) to assess fines and penalties for all new Notices of Probable Violations (NPV's). The matrix' development stems from a March 28, 2016 ruling of the Maryland Court of Special Appeals (*Reliable Contracting v. Maryland Underground Facilities Damage Prevention Authority*); which upheld the constitutionality of the Authority, but also stated that when assessing fines, the Authority must take into consideration three factors 1) Seriousness of the Violation, 2) Intent "good faith" of Violator, and 3) Past history of Violations. The SFM was developed by a sub-committee of the Authority utilizing the three-point weighting system required by the court which included an in-depth number of factors in each category, for rating the degree of the Violator's offense and other mitigating factors

## **EDUCATION & OUTREACH**

The Authority's Education and Outreach activities have continued to grow and evolve in 2016. The Authority has participated in eighteen 18 presentations and conferences and trained over 3000 industry workers on the "Miss Utility" law in Maryland during the 2016 calendar year. This reflects a 54% increase over 2015 in the number of industry workers trained in the Title XII statute requirements. All fines collected from violators of the "Miss Utility" law go directly into the Authority's Education and Outreach Fund, which underwrites the Authority's training and community awareness programs. In addition, the Authority awards grants within the underground facilities network of owners to assist in their educational efforts. In 2016, the Authority received over \$73,000.00 in fines, none of which go to the day-to-day operation of the Authority.

The Authority website can also be accessed through the "Miss Utility", One Call Concept and USPCDs websites; which are the portals for on-line excavation ticket requests. In addition, our members and allied partners are encouraged to share links that could be placed on the Authority's website, to other relevant organizations, training opportunities and conferences. The Authority continues to purchase materials and create literature for distribution at the various conferences, conventions and trade shows and training sessions it attends.

In 2016, the Authority purchased a 10 x10 display booth for use at the MML and MACo Conferences as well as other venues. Professionalizing and standardizing the Authority's image has helped to send a strong message about the legitimacy of the Authority and its Mission. The Authority continues to produce instructional materials in Spanish in order to better serve the many Latino underground utility and construction companies and their workers operating in Maryland today.

### **DISTRICT OF COLUMBIA REWRITE COMPLETED**

The Executive Director of the Authority worked with DC Rewrite group over the past twelve (12) months on the revamping of the One-Call compliance process in the District of Columbia. The immediate past Chairman of the Authority, Kevin Woolbright, participated as well. The final draft of the newly proposed DC statute was presented for review to members of the Washington, DC City Council, Mayor and the DC Office of the Attorney General. During the interim, the DC Damage Prevention Program is being overseen by the DC Department of Transportation. There has been no legislative time-line presented by either the Mayor's office or the City Council to-date.

### **MD/DC DAMAGE PREVENTION COMMITTEE (PWC)**

The Executive Director continues to attend and participate in meetings of the MD/DCPWC. This group meets monthly to discuss safety issues and damage trends in Maryland. As volunteers and experts in their fields, these individuals are an integral part of the Authority's training program. Training sessions are held quarterly at the One-Call Center in Hanover, Maryland. On average, at least fifty industry workers attend these sessions. Integral in the training module is an in-depth understanding of the Title XII statute more commonly known as the "Miss Utility" law. Beside its quarterly training sessions, the MD/DCPWC goes off-site on multiple occasions throughout the year and throughout the State to provide damage prevention training and information about "the law".

### **STAFFING**

James A. Barron, continues on as the Executive Director of the Authority. Ms. Susan Ann Mary Stroud remains the Assistant to the Executive Director, with increased hours and responsibilities. A search is on for a permanent part-time case Investigator.

## **AUTHORITY PRESENTATIONS**

As the head of the Authority, the Executive Director is often called on to give presentations and represent the Authority around the State of Maryland and elsewhere. Below is a listing of the 2016 activities:

2016 – Twelve (12) monthly meetings of Maryland/DC Damage Prevention Committee, Hanover, Maryland

April 2016 – Delmarva Safety Association – Spring Safety and Health Conference, Ocean City, MD

June 2016 – Maryland Municipal League Summer Conference, Ocean City, Maryland

August 2016 – Maryland Association of Counties Summer Conference, Ocean City, Maryland

October 2016 – One Call Concepts Users' Group & Technology Committee Meeting, Boston, Massachusetts

October 2016 – Greater Chesapeake Damage Prevention Training Conference, Ocean City, Maryland

October 2016 – Maryland/DC Subscribers Committee, Board of Director Quarterly Meeting, Cumberland, Maryland



## 2016 NPV RECAP

On the enforcement side, the Authority received eighty-seven (87) Notices of Probable Violation (NPV's) in 2016.

- Of those **eighty-seven** (87) NPV's, twelve (12) were closed in 2016.
  - **Two** (2) were filed by a contractor
  - **Two** (2) were judged non-violations
  
- In 2016 **fifty-two** (52) carried over from 2015 and were acted upon as noted below:
  - **Three** (3) was closed in 2015 because the Authority determined there was no violation of the statute
  - **Twenty-five** (25) were closed in 2016 with fines totaling \$35,000 and Damage Prevention Training completed
  - **Five** (4) remain open into 2015 with fines paid totaling \$13,000 and Damage Prevention Training yet to be completed, and
  - **Six** (6) remain open awaiting hearings
  - **Five** (5) were served by a Process Server
  - **Nine** (9) are in Collections (2013-2016)

*When Notices of Probable Violation are filed on the Authority Website, the person filing the complaint can identify one or multiple probable violations of the Annotated Code of Maryland, Public Utilities, Title 12 – Public Utilities statute. Of the Two Hundred Forty-Six (246) Notices of Probable Violation filed with the Those probable violations breakdown into the following categories identified in the statute and in the numbers associated with each probable violation filed.*

- **Section §12-121 – Abuse of Emergency Notification -**
  - Twenty-two (22) probable violations filed.
  
- **Section §12-123 – Failure to Join One-Call System**
  - ◆ Sixty- Seven (67) violations.
  - Sixty-five (65) municipalities
    - ◆ Five (5) have executed contracts, but not operational.
    - ◆ Twenty (20) awaiting exemption letters.
    - ◆ Eleven (11) sent contracts, but not responding.
    - ◆ Twenty-five (25) refuse to acknowledge.
    - ◆ Five (5) have joined.
  - One (1) Cable company has joined
  - One (1) County has joined
  - Two (2) Counties continue to violate marking requirements.
  
- **Section §12-124 – Notice to One-Call System**
  - One hundred eighty-six (186) probable violations filed.
    - One Hundred Seventy-two (172) no call, 1<sup>st</sup> offense.
    - Five (7) no call, 2<sup>nd</sup> offense.
    - Two (2) no call, 3<sup>rd</sup> offense.
    - One (1) no call, 4<sup>th</sup> offense.
    - Four (4) tickets not yet cleared.
    - Five (5) tickets expired.
    - One (1) abuse of 48 hour delay.



- **Section §12-126 – Marking Requirements.**
  - Nineteen (19) probable violations filed.
    - Twelve (12) late marks.
    - Five (5) no marks.
    - Four (4) miss-marks.
  
- **Section §12-127 – Excavation after Notice that Facilities are either Marked or are No Conflict.**
  - One Hundred Thirty-one (131) probable violations filed.
    - Three (3) maintenance of marks.
    - Ten (10) Duties of Excavators.
    - Eight (8) due care.
    - Nine (9) no test pit dug.
    - Twelve (12) use of mechanized equipment w/in 18”
    - Four (4) notification of damage.
    - Eighty-three (83) clear evidence.



## **FUTURE AUTHORITY ACTIONS**

The Authority will continue to meet publically in 2017 and will continue with its education and outreach efforts. A copy of the 2017 meeting schedule is included in Appendix B of this report. In the Seventh year of its existence, the Authority will be focusing on the following:

- The Authority anticipates the formation of a new legislative re-write committee in early 2017. The group will be comprised of all stakeholders involved in underground facility ownership, safety and construction; as well as other interested parties who have a vested interest in Title XII. Having now been in operation for six (6) years, the Authority has catalogued deficiencies, potential enhancements, efficiencies and clarifications that would greatly improve the Maryland One-Call compliance program or “Miss Utility” law. As mentioned previously in this document the onus lies squarely on the Authority to continually improve the State’s program in order to stay in step with the Federal Authority’s (PHMSA) requirements. To fall behind in upgrades to law, could substantially threaten Maryland’s maintain its “Adequacy” rating, there by threatening its ability to self-police and protect its underground facilities. The loss of regulatory control to the Federal Government could potentially cost Maryland businesses, municipalities, counties and utility owners millions of dollars in fine actions should this occur.

- With the development of the Standardized Fining Matrix (SFM) the potential of creating a pre-hearing “Negotiated Settlement” approach in order to streamline the Notice of Probable Violations (NPV’s) process is now more achievable. With this development, the Authority hopes to create a more efficient method that allows probable violators to work with the Authority to obtain a fair and equitable outcome to their case; that does not infringe on a probable violator’s due process. But would allow a probable violator to review and accept a settlement offer in lieu of going through the formal hearing process.
- Continue to seek ways to modernize the Authority’s approach to training and education that is more accessible to those working on job sites, by developing on-line modules and webinars. The Authority will also explore ways to develop and adopt a continuing education module in order to keep our contracting community up- to-date on the latest safety innovations and changes to the Title XII statute.
- Continue to advocate, educate and evaluate and enforce underground utility safety to the contracting community and the general public in the State of Maryland, with a renewed emphasis on outreach to the Latinos and other minority companies, who are becoming a fast-growing segment of the Maryland construction and underground utility industries.



## **CONCLUSION**

The Authority sincerely believes that a great deal more has been accomplished by the members of the Authority in complying with the requirements of the law during 2016. The Authority has seen a sixty (60) percent increase in NPV's filed. A fifty-three (53) percent increase in the number of industry workers trained in the Title XII law; as well as a seventy-five (75) percent increase in fines paid in the 2016 calendar year. As a one of a kind entity in the nation, the Authority has and will continue to demonstrate the value of an independent quasi-judicial model of enforcement. Maryland leads the nation with this concept. The Authority will continue its focus on public awareness and compliance with damage prevention and safe excavation.

Each of the Authority members appointed by the Governor continues to serve in a very dedicated, professional and committed fashion to accomplish the goals of damage prevention and public education. And, value their roles with the Authority as both advocates and protectors of the Maryland public's safety and security.

The Authority hopes that the Governor and the Maryland General Assembly will continue recognize and utilize it as a resource of professional knowledge and practical expertise with regard to any pending policy or legislative matter within the scope of the Authority's role.



## **APPENDIX A**

### **Origin and Background of the Authority**



## **ORIGIN AND BACKGROUND OF AUTHORITY**

In the fall of 2006, two meetings were scheduled by the Maryland Public Service Commission on October 25, 2006 and November 29, 2006. All stakeholders involved with or affected by the State's Underground Facilities Law were invited to discuss the status of the application and enforcement of the law, and, in particular, its compliance with the Federal Pipeline Safety Act (Pipes Act) legislation then pending before the United States Congress.

Several hundred-people attended these two meetings, all stakeholders of Maryland's Underground Facilities law such as contractors, utility companies, locators, one call miss utility system, county and local government officials and developers.

As a result of these discussions, it was decided that a Stakeholders Steering Committee would be formed as a work group, tasked with the following goals:

- Review the current State underground facilities "Miss Utility Law" to make substantive and non-substantive revisions in light of current practices and experience since the last enactment of the law in May 1990.
- Bring Maryland's law in harmony and compliance with the 9 damage prevention program elements and provisions of the then pending Federal Pipeline Safety Act legislation which subsequently has become federal law.
- Review and incorporate, where appropriate, the best practice recommendations of the Common Ground Alliance (CGA) (see attached).

## **Members of the Stakeholders Group were:**

James Barron, Chairman – Ronkin Construction – Contractor Representative  
Scott Brown – Washington Gas Light – Utility Representative  
John Clementson- MD Public Service Commission– Regulator Representative  
Wayne Gilmer – Utiliquest – Locator Representative  
Tom Hastings – One Call Concepts Locating Service – Locator Representative  
Vince Healy – Verizon – Telephone Representative  
Brian Holmes – Maryland Transportation, Builders and Materials Association  
– Contractor Representative (resigned August 2009)  
Gary Kaufman – Comcast/CATV Representative  
Matt Ruddo – One Call Concepts, Inc. – Call Center Representative  
Nelson Smith – MD State Highway Administration – Representative  
Tom Baldwin – Baltimore Gas & Electric -Representative  
Kevin Woolbright – Washington Suburban Sanitary Commission- W/S Representative  
Artie Bell III – Burgemeister Bell, Inc. – Contractor Representative  
Zenon Sushko- Maryland Public Service Commission – Regulator Representative  
Bruce C. Bereano – Associated Utility Contractors of Maryland Representative  
Mark Hamrick – Verizon – Telephone Representative

The Stakeholders Group began its regular meetings on June 20, 2007 and conducted more than 65 working meetings – each approximately three to four hours in duration, in order to discuss and propose revisions to the current statute.

The key goals of the steering group were to:

- Establish practices that meet the 2006 PIPES Act 9 key elements of an effective damage prevention program.
- Craft a sensible law that meets the needs of the excavating community while protecting all facilities.
- Include a stronger enforcement program in order to prevent unsafe practices utilizing the Damage Prevention Committee (DPC); which was created privately by the Stakeholders some twenty (20) years ago. All interested parties are welcome to attend the monthly meetings to discuss safe practices and resolve issues. The DPC's expectations are that proposed changes to the law will strengthen their present damage prevention goals.
- Devise a user friendly Locate "Ticket" system which would include: a required response time by facility (underground utilities) owners; expand the life of a ticket with a clear explanation of when a ticket will expire, while meeting the needs of the excavating community; which would allow facility owners a reasonable amount of time to mark (locate) their facilities.

The final product of the Stakeholders Group was presented to the Maryland General Assembly during the 2010 Legislative Session as Senate Bill 911 sponsored by Finance Committee Vice-Chairman John C. Astle, and House Bill 1290 sponsored by Economic Matters Committee Chair, Dereck E. Davis. Senate Bill 911 was enacted by the Legislature and the Maryland Underground Facilities Damage Prevention Authority (MUFDPDA) was created. Maryland's underground facility damage prevention law, more commonly known as the Miss Utility Law, was also updated via this legislation.

Unlike similar state statutes, Maryland's underground facilities law; which was originally enacted over 20 years ago, utilized the private sector, not government regulators to implement and apply its statute. This approach has worked very well over the years, with all of the various Stakeholders communicating and working together with mutual respect and commitment to the goal of public safety through training and education and compliance with the Miss Utility law.

### **About the Common Ground Alliance (CGA)**

CGA is a member-driven association of 1,700 individuals, organizations and sponsors in every facet of the underground utility industry. Established in 2000, CGA is committed to saving lives and preventing damage to underground infrastructure by promoting effective damage prevention practices. CGA has established itself as the leading organization in an effort to reduce damages to underground facilities in North America through shared responsibility among all stakeholders.

In promoting a spirit of shared responsibility, the CGA welcomes all stakeholders who would like to be a part of the identification and promotion of best practices that lead to a reduction in damage. Any best practice or program endorsed by the CGA comes with consensus support from experts representing the following stakeholder groups: Excavators, Locators, Road Builders, Electric, Telecommunications, Oil, Gas Distribution, Gas Transmission, Railroad, One Call, Public Works, Equipment Manufacturing, State Regulators, Insurance, Emergency Services and Engineering/Design.



## **Background**

Officially formed in 2000, the CGA represents a continuation of the damage prevention efforts embodied by the Common Ground Study. Sponsored by the U.S. Department of Transportation and completed in 1999, this Study represents the collaborative work of 160 industry professionals who identified best practices relating to damage prevention.

The CGA provides today's optimal forum where stakeholders can share information and perspectives and work together on all aspects of damage prevention issues. This allows the achievement of results that would otherwise be impossible. The CGA is working with industry stakeholders and regulators to produce stronger, more effective results through partnership, collaboration, and the pursuit of common goals in damage prevention.

### **CGA Mission (Purpose of the CGA)**

Provide clear and tangible value to our stakeholders by helping to reduce damages to North America's underground infrastructure. The CGA works cooperatively, fostering a sense of shared responsibility to enhance safety and protect underground facilities by:

- Identifying and disseminating the stakeholder best practices;
- Developing and conducting public awareness and education programs;
- Sharing and disseminating damage prevention tools and technology; and
- Serving as the premier resource for damage and one call center data collection, analysis and dissemination.

See more at: <http://commongroundalliance.com>



## **APPENDIX B**

### **2017 Authority Meeting Schedule**



## 2017 Meeting Schedule

January 4, 2017	Open Meeting/Election of Officers Closed Executive Session
February 1, 2017	Open Meeting & Hearings Closed Executive Session
March 1, 2017	Open Meeting & Hearings Closed Executive Session
April 5, 2017	Open Meeting Closed Executive Session
May 3, 2017	Open Meeting Closed Executive Session
June 7, 2017	Open Meeting Closed Executive Session
July 5, 2017	Open Meeting Closed Executive Session
August 2, 2017	Open Meeting Closed Executive Session
September 6, 2017	Open Meeting Closed Executive Session
October 4, 2017	Open Meeting Closed Executive Session
November 1, 2017	Open Meeting Closed Executive Session
December 6, 2017	Open Meeting Closed Executive Session

NOTE: All meetings and hearings of the authority are advertised in the MARYLAND Register and with the Department of Legislative Services as well as the MUFDPA website: [www.mddpa.org](http://www.mddpa.org).



## **APPENDIX C**

**Notice of Probable Violation Process**

**Standardized Fining Matrix (SFM)**

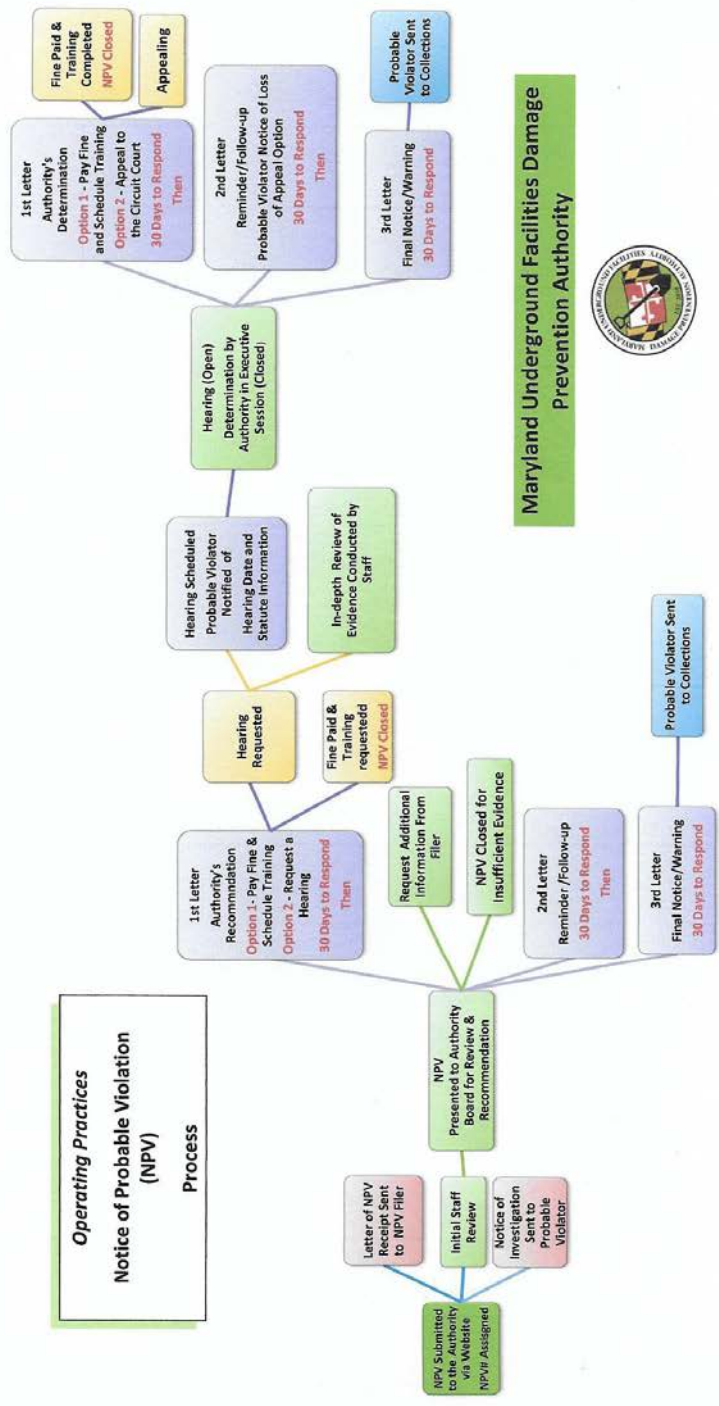


**Operating Practices  
of the  
Maryland Underground Facilities Damage Prevention Authority  
("The Authority")**

**NPV Recommendation Procedure**

1. Upon completion of a thorough and comprehensive investigation of the Notice of Probable Violation (NPV) submitted by a complainant on the Authority Website, the Executive Director will present the entire review of the NPV along with all supporting documentation to the Authority at the next regularly scheduled meeting of the Authority.
2. After the Authority completes their review of the NPV at a regularly scheduled meeting, the Authority will either (1) assign a recommendation of civil penalty and/or training for the probable violator, (2) request additional investigative procedures to acquire more information and documentation for a further review of the NPV before making a recommendation or (3) dismiss the NPV for (a) a lack of a documented violation, (b) a lack of a documented probable violator, (c) a lack of sufficient evidence and documentation to proceed with any further investigation or (d) any reason the Authority may deem reasonable for not proceeding with any further investigation or review of the NPV.
3. If the Authority makes a recommendation of civil penalty and/or training, the Executive Director will forward a letter by regular mail to the probable violator alerting them of the (1) the establishment of the Authority and its legislative intent and authority, (2) the details of the NPV as outlined in the initial submission by the complainant, (3) the research of the Authority, (4) possible effects of subtitle §12-135, (5) the action taken by the Authority, (4) the probable violator's rights, remedies and options, and (5) the existence of Maryland's Administrative Procedure Act (APA) and how it impacts the hearing process.
4. If the probable violator does not respond to the Authority's recommendation letter within the prescribed 20-day period, the Executive Director will send a second recommendation letter by certified mail as outlined in 3 above.
5. If the probable violator still does not respond to the Authority's recommendation letter, the Executive Director will bring the issue back to the Authority at their next regularly scheduled meeting at which time the Authority will assign a hearing date for the NPV and direct the Executive Director to notify all parties to the NPV of the hearing date and, at the discretion of the Authority issue a subpoena to the probable violator and to any other party the Authority deems necessary to summons.

**Operating Practices  
Notice of Probable Violation  
(NPV)  
Process**



**Maryland Underground Facilities Damage  
Prevention Authority**





**Operating Practices  
of the  
Maryland Underground Facilities Damage Prevention Authority  
("The Authority")**

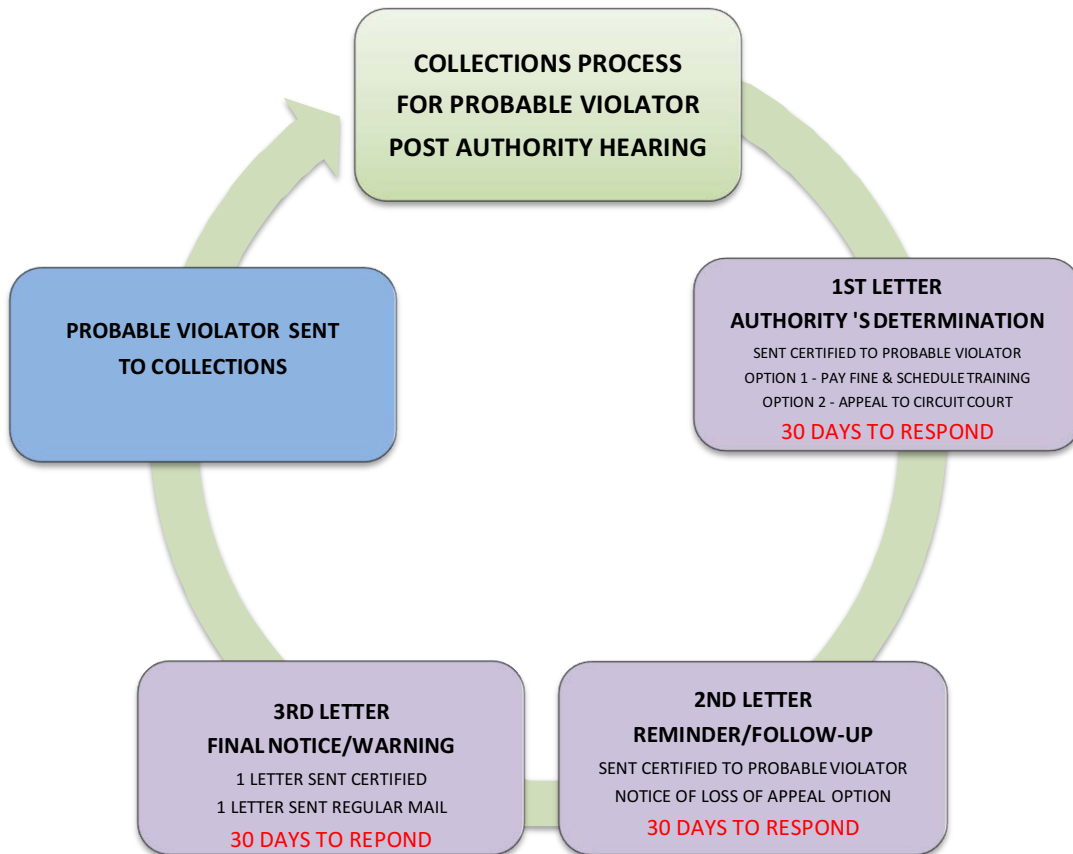
**Collection Procedure**

1. Within 30 days after the expiration of the 30 day time for an aggrieved person to appeal the decision of the Authority for judicial review to the Circuit Court (see Section 12-113 (e), Public Utility Article) the Authority staff shall send notice to the person who has been determined by the Authority to be in violation and assessed a civil penalty advising such person that if payment is not made to the Authority that the Authority shall turn the collection matter over either to a collection agency or an attorney at law for purposes to directly collect such assessed civil penalty.
2. If within 30 days after sending such collection notice letter to such person assessed with a civil penalty by the Authority that person does not satisfactorily respond and make payment in full or make with the Authority satisfaction arrangements for payment, the Authority staff then and in such an event shall promptly turn the collection matter over either to a collection agency or an attorney at law for collection.



**Operating Practices  
Of the  
Maryland Underground Facilities Damage Prevention Authority  
("The Authority")**

**POST HEARING COLLECTIONS PROCESS**

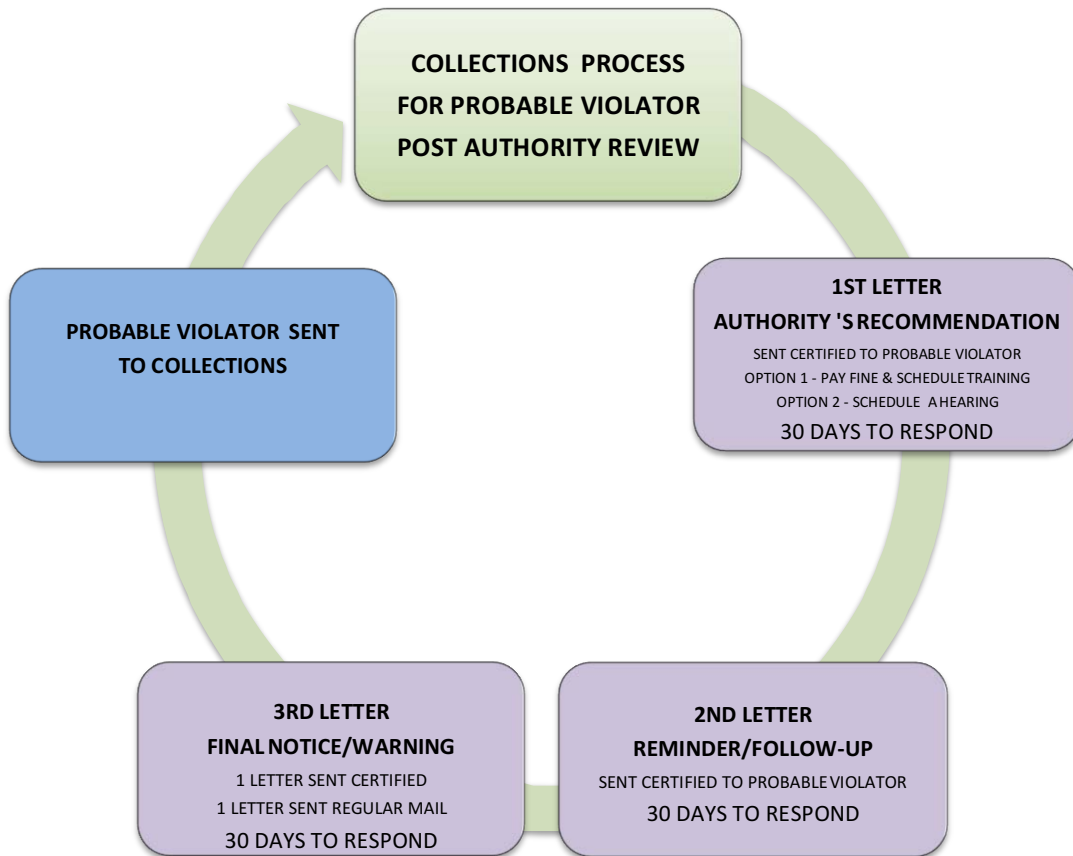






**Operating Practices  
Of the  
Maryland Underground Facilities Damage Prevention Authority  
("The Authority")**

**POST REVIEW COLLECTIONS PROCESS**



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

Violations [ see §12-135 (a) - Civil Penalties only for violations of Part IV Subtitles ]

**§12-120 Effect of Subtitle**

There is no specific provision of the Subtitle that potentially could be violated, however, provisions of this Subtitle can be referenced in violations of other Subtitles in Part IV.

**§12-121 Emergency Excavation or Demolition**

- (b) (1) Reasonable Care during excavation under an Emergency Ticket
- (b) (2) Failure to call in an Emergency Excavation
- (c) Abuse of an Emergency Ticket

**§12-122. One-Call System Registration and Certification Requirements; Owner-Contractor Information Exchange System**

- (a) Failure to register with the Commission
- (c) (1) Underground Facilities Information Exchange System not installed or available
- (c) (2) Underground Facilities Information Exchange System not available to any caller at all times

**§12-123 Owner-Member of One-Call System**

- (a) (1) An Owner shall be a member of a One-Call System
- (a) (2) An Owner shall register with the One-Call System
- (a) (3) The Department of Transportation, its administrators, and the Maryland Transportation Authority shall be members
- (b) (1) Required submissions
- (b) (2) Keep contact information current

**§12-124**

**Notice to One-Call System**

- (a) Person that intends to perform an excavation or demolition shall initiate a ticket (1st or subsequent offense)
- (b) (1) Location of proposed excavation or demolition
- (b) (2) Is excavation or demolition in DOT (or affiliate) Right-of-Way
- (b) (3) Type of Work proposed
- (c) (1) Transmit Ticket to affected Owner-Members
- (c) (2) Transmit Ticket to Department of Transportation and Affiliates
- (c) (3) 12 Business Day Ticket Life

**§12-125**

**Repeat Notification**

- (a) (1) A person shall repeat notification if work not completed within ticket life, §12-124 (c) (3)
- (a) (2) A person shall repeat notification if excavation or demolition area expanded
- (b) (1) No exemption to repeat notification for 24-hour or 48-hour delays
- (b) (2) No exemption to repeat notification if there's an agreement for time markings

**§12-126**

**Marking Requirements**

- (a) (1) Owner-Member shall mark facility if within 5 feet of proposed excavation or demolition
- (a) (2) Owner-Member shall mark facility if blasting is planned near excavation or demolition
- (b) (1) Owner-Member shall mark within 18" on horizontal plane on either side of facility
- (b) (2) (i) Owner-Member shall marking using APWA color codes
- (b) (2) (ii) If multiple Owner-Members share the same color, each owner-member shall include information with marks
- (c) Owner-Member must mark the facility within 2 business days after the day the ticket is transferred
- (c) (1) Owner-Member must report to underground facilities information exchange system that the facility is marked
- (c) (2) Owner-Member must report to underground facilities information exchange system no facilities in vicinity
- (d) (1) Due to scope of work owner-member can't mark in time, they shall:
- (d) (1) (i) Notify underground facilities information exchange system and the person performing the excavation or demolition
- (d) (1) (ii) Work the person performing the excavation or demolition to develop a mutually agreeable schedule for marking
- (d) (2) If an agreement can't be reached, the owner-member shall mark where excavation or demolition will first occur
- (d) (3) 24-hour or 48-hour delay
- (d) (4) Working agreements for extensive or contiguous excavation or demolition

**§12-127**

**Excavation After Notice that Facilities Marked or Not in Vicinity**

- (a) A Person may begin excavation or demolition only after they receive notification that:
  - (a) (1) The owner-member has marked the underground facilities in accordance with §12-126 (c)
  - (a) (2) The owner-member has marked the underground facilities in accordance with §12-126 (d)
  - (a) (3) The owner-member has reported they have no underground facilities in the vicinity of the excavation or demolition
  - (b) (1) The person performing the excavation or demolition is responsible for the maintenance of the marks
  - (b) (2) If marks are obliterated, destroyed or removed the person shall repeat the notification required under §12-124
  - (c) (1) A person performing an excavation or demolition shall exercise due care to avoid to damage to a marked facility
  - (c) (2) Before using mechanized equipment within 18 inches of the marks the person shall test pit by nondestructive means
  - (c) (3) A person may not use mechanized equipment within 18 inches of an exposed facility
  - (d) (1) A person performing an excavation or demolition must contact the owner-member if they discover or cause damage
  - (d) (2) If the damage causes the escape of flammable, toxic or corrosive gas or liquid they must call 911
  - (e) (1) A person may not begin an excavation or demolition if there is "clear evidence" of unmarked facilities unless
  - (e) (1) (i) They have repeated the notification required under §12-124 and
  - (e) (1) (ii) They have received notification confirming that all notified owner-members have marked their facilities
  - (e) (1) (iii) Per §12-126 (c)
  - (e) (1) (iv) Per §12-126 (d)
  - (d) (1) If all requirements under §12-127 (e) (1) have been met, the person can proceed with the excavation or demolition

**§12-128**

**Reimbursement of Political Subdivision, Municipal Corporation, or Governmental Entities.**

- (a) A political subdivision, municipal corporation, the Department of Transportation, an administration of the Department of Transportation, or the Maryland Transportation Authority may charge a one-time marking fee not exceeding \$35
- (b) If re-marking is required per any subtitle of Title 12, any of the entities specified in subsection a of this subtitle may charge a one-time re-marking fee not exceeding \$15

**§12-129**

**Detectable Wires for Connecting Buildings to Water Supply or Sewerage Systems.**

- (a) Any new or replacement undetectable piping installed after October 1, 2015 must be buried with detectable wire
- (b) (1) Wire must be insulated copper tracer wire, at least American wire gauge 10 or equivalent
- (b) (2) (i) Must be installed in the same trench as the piping
- (b) (2) (ii) Must be installed within 12 inches of the piping
- (b) (2) (iii) Must terminate above grade resistant to physical damage such as a cleanout or building wall
- (b) (3) (i) Must run from 5 feet of the building wall to the point it intersects with the water supply or sewerage system
- (b) (3) (ii) Or to the point where the sewerage system disposes of or processes sewage
- (c) §12-129 does not apply to pipe repairs or partial pipe replacements

**Maryland Underground Facilities Damage Prevention Authority**

7223 Parkway Drive  
Hanover, Maryland 21076  
NPV# XXXX

Violations	Maximum Fine
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -

Maximum Fine	Finning Matrix Penalty Weighting System		
	% of Fine (weighting)	Discount % 0% to 100%	Discount \$ Amount
\$ -			

Seriousness of the Violation	35%	0%	\$ -
Intent ("good faith") of Violator	35%	0%	\$ -
Past History of Violations	30%	0%	\$ -
<b>Subtotal</b>			<b>\$ -</b>

<b>Required Training Discount</b> (Up to 50% of the subtotal but not to exceed \$1,000.00)	50%	\$ -
<b>Total Recommended Fine Due</b>		<b>\$ -</b>





Discount  Appropriate Box

Very Serious	0%	<input type="checkbox"/>
Serious	25%	<input type="checkbox"/>
Potentially Serious	50%	<input type="checkbox"/>
Not Serious	75%	<input type="checkbox"/>

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Total Credit Assessed 0%





## Intent ("good faith") of the Violator

Appropriate Box

Intent ("good faith") Questions	Yes	No	?	Comments
Was there an active valid Miss Utility Ticket for this Violation?				
If yes, had the Miss Utility Ticket Cleared?				
If yes, had the Miss Utility Ticket Expired?				
If yes, were the locate instructions clear and concise?				
If yes, was the underground facility marked within 18 inches?				
Did the violator test pit to locate the underground facility?				
What were the conditions of the markings?				
Bright				
Visible				
Faded				
Destroyed				
If destroyed, did the violator call for a remark?				
Did the violator access the Underground Information Exchange System?				
Did the violator have a copy of the Miss Utility Ticket onsite?				
Was there "Clear Evidence" of underground facilities not marked?				
Did the violator respond to the Notice of Investigation Letter?				

Discount

Appropriate Box

High Intent ("good faith")	75%	<input type="checkbox"/>
Medium Intent ("good faith")	50%	<input type="checkbox"/>
Low Intent ("good faith")	25%	<input type="checkbox"/>
No Intent ("good faith")	0%	<input type="checkbox"/>
<b>Total Credit Assessed</b>	<b>0%</b>	<input type="checkbox"/>

## Past History of the Violator

Appropriate Box

Past History Questions	Yes	No	?	Comments
Does the violator attend monthly Damage Prevention Meetings				
If yes, regularly?				
If yes, occasionally?				
Has the violator participated in damage prevention training?				
Did the Damage Prevention Committee provide the training?				
Was it Authority required training?				
What was the date and location of the training?				
If not Damage Prevention Committee Training, who sponsored it?				
Did the violator test pit to locate the underground facility?				
Has the violator processed Miss Utility Tickets through the One-Call Center in the past year?				
If yes, how many?				
Approximately, how many years has the company been in business?				
Approximately how many people does the company employ?				
Has the violator had any previous Notices of Probable Violation (NPV's) with the Authority?				
If yes, how many?				

List any previous NPV's and details

NPV#	Subtitle/Privision of Violation	What are the Details of the Violation
	What Action, if any, did the Authority take on this NPV?	

NPV#	Subtitle/Prvision of Violation	What are the Details of the Violation
What Action, if any, did the Authority take on this NPV?		

Discount

Appropriate Box

Excellent History	75%
Average History	50%
Poor History	25%
No History	0%


Total Credit Assessed	0%
-----------------------	----

### Circumstances of the Violation

Appropriate Box

Circumstance Questions	Yes	No	?	Comments
Did this violation involve an excavation?				
Did this violation involve a demolition?				
Were explosives involved in this violation?				
What was the setting for this violation?				
Urban				
Suburban				
Rural				
Did this violation occur on private property?				
Did this violation occur on public property?				
Did this violation occur at night?				
Did this violation occur in the day?				
Did this violation occur on a weekend?				
Did this violation occur on a weekday?				
Did this violation occur on a holiday?				
Did this violation occur during inclement weather?				
If yes, please explain in Comments.				
Do the circumstances of this violation support the Complainants' subsection/provision designation?				
If no, what subsection/provision of Title 12 has been violated?				



## **APPENDIX D**

### **PHMSA**

## **Pipeline Damage Prevention Program Final Rule**

**(49-43835-43869)**

### **2106 PHMSA Adequacy Evaluation**



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

1200 New Jersey Ave., S.E.  
Washington, DC 20590

DEC 22 2015

**OVERNIGHT EXPRESS MAIL**

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

Dear Mr. Barron:

On July 23, 2015, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) published its Pipeline Damage Prevention Program Final Rule (49 FR 43835-43869) that may likely impact your State. The rule includes new criteria and procedures to determine the adequacy of State damage prevention enforcement programs, administrative procedures for States to contest a notice of inadequacy, the Federal requirements PHMSA will enforce against excavators for violations in States with inadequate damage prevention laws and programs, and the adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised. These new rules become effective on January 1, 2016. Please refer to the included guidance brief for background on this new regulation.

Excavation damage continues to be a leading cause of hazardous liquid and natural gas pipeline incidents resulting in death, serious injury, and environmental damage. Damaging a pipeline during an excavation poses a serious safety risk to excavators, the general public living and working in proximity to the excavation site, and the environment. Nationwide statistics show that effective enforcement of a State's one-call law reduces excavation damage and pipeline incidents, and results in increased safety.

In early 2016, PHMSA will initiate State evaluations to determine if State damage prevention one-call laws allow for adequate enforcement. PHMSA will evaluate your State's damage prevention enforcement program and will issue a formal determination in your State, as to whether or not the one-call law enforcement is inadequate in your State. An inadequate determination means that PHMSA may use Federal excavation standards to take enforcement action against an excavator who damages a hazardous liquid or natural gas pipeline in your State. Federal civil penalty levels are \$200,000 for each violation for each day the violation continues with a maximum civil penalty of \$2,000,000 for any related series of violations. Additionally, States that fail to establish an adequate one-call law enforcement program, within five years from



the date of the final PHMSA determination notice, may be subject to a 4 percent reduction in PHMSA State Base Grant funding.

PHMSA strongly believes that effective damage prevention programs, including enforcement, are best addressed at the State level. We stand ready to assist you in whatever way best to help support a strong damage prevention program in your State. If we can be of any further assistance, please contact our Damage Prevention Team by email at [excavation.enforcement@dot.gov](mailto:excavation.enforcement@dot.gov) or by phone at (804) 556-4678.

Sincerely,



Alan K. Mayberry  
Deputy Associate Administrator  
for Policy and Programs

cc: The Honorable Larry Hogan, Office of the Governor, State of Maryland  
W. Kevin Hughes, Chairman, Maryland Public Service Commission  
John Clementson, Assistant Chief Engineer, Maryland Public Service Commission  
Matt Ruddo, Director, Customer Relations, One Call Concepts



**United States Department of Transportation (USDOT)**  
**Pipeline and Hazardous Materials Safety Administration (PHMSA)**  
**Pipeline Safety: Pipeline Damage Prevention Programs**  
**49 CFR 196 – Protection of Underground Pipelines from Excavation Activity**  
**49 CFR 198 – Regulations for Grants to Aid State Pipeline Safety Programs**  
**Effective January 1, 2016**

**Background**

49 USC § 60114 provides the United States Department of Transportation with back stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines in a State that has failed to adequately enforce its excavation damage prevention or one-call laws.

PHMSA published a Final Rule on July 23, 2015, that establishes:

1. Criteria and procedures for determining the adequacy of state pipeline excavation damage prevention law enforcement programs
2. An administrative process for making adequacy determinations
3. Federal requirements PHMSA will enforce in States with inadequate excavation damage prevention law enforcement programs
4. The adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised

**Criteria to be used to Evaluate State Damage Prevention Programs**

1. Does the State have enforcement authority including civil penalties?
2. Is there a designated enforcement body?
3. Is the State using its authority and making enforcement records available to the public?
4. Does the State have a reliable means of learning about damages?
5. Does the State have damage investigation practices that are adequate to determine the at-fault party when damage occurs?
6. At a minimum, does State law require:
  - a. Excavators must call 811 before digging
  - b. Excavators must “respect the marks”
  - c. If damage to a pipeline occurs:
    - i. Excavator must report damage to operator at earliest practical moment
    - ii. If release occurs, excavator must call 911
7. Are exemptions from the DP law limited? Written justification of exemptions is required.

### **Administrative Process for States to Contest Notices of Inadequacy**

1. PHMSA issues a notice of inadequacy to the State in accordance with 49 CFR 190.5
2. State will have 30 days to submit written response
3. PHMSA issues final decision
4. State may petition PHMSA to reconsider at any time following a finding of inadequacy; PHMSA will respond not later than the date of the next annual review
5. States that fail to establish an adequate enforcement program within five years of effective date of final rule may be subject to 4 percent reduction in base grant funding

### **Federal Standard for Excavators**

1. Call 811 before excavating
2. Wait for pipeline operators to establish and mark the location of underground pipelines before excavating
3. Excavate with proper regard for the marks, take all practicable steps to prevent excavation damage
4. Make additional use of one-call as necessary
5. Any contact with pipelines must be reported to operator at earliest practical moment
6. If there is a release, excavator must call 911

There are no exemptions in the new regulation for calling 811 prior to excavation. PHMSA understands many States have one-call law exemptions and will be considerate of those exemptions when undertaking Federal enforcement action.

### **For More Information**

<http://phmsa.dot.gov/pipeline/safety-awareness-and-outreach/excavator-enforcement/>

### **Contact Our Damage Prevention Team**

Our team of damage prevention professionals, Sam Hall, Annmarie Robertson, and Steve Fischer, are available to answer questions pertaining to this final rule, State one call laws, and damage prevention. They may be reached at [excavation.enforcement@dot.gov](mailto:excavation.enforcement@dot.gov).





U.S. Department  
of Transportation

Pipeline and Hazardous Materials  
Safety Administration

1200 New Jersey Avenue SE  
Washington DC 20590

DEC 28 2016

**OVERNIGHT EXPRESS MAIL**

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

Dear Mr. Barron:

On June 29, 2016, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an adequacy evaluation of Maryland's enforcement of its excavation damage prevention law, Annotated Code of Maryland, Public Utilities Article Title 12: Underground Facilities, Sections 12-101 through 12-135. This letter serves as your official notice of our findings and determination. PHMSA has determined that the enforcement of Maryland's excavation damage prevention law is **ADEQUATE**. No further action is required at this time. PHMSA will schedule a follow-up evaluation next year to determine if Maryland is continuing to adequately enforce the excavation damage prevention law.

PHMSA conducted the 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. Our representatives met with you and Susan Stroud of the Maryland Underground Facilities Damage Prevention Authority; John Clementson of the Maryland Public Service Commission; Tom Hastings and Matt Ruddo of One Call Concepts; and Charles McCadden of BGE. During the evaluation, PHMSA representatives asked a series of standard questions regarding actions that Maryland executed in calendar year 2015 to enforce the Maryland excavation damage prevention law.

In accordance with 49 CFR 198.55, States must be able to demonstrate that they adequately meet the seven Federal criteria that PHMSA uses to assess the effectiveness of the State's damage prevention enforcement programs. These criteria evaluate if the State has the authority to enforce its excavation damage prevention law, whether the State utilizes its authority to issue civil penalties and other appropriate sanctions for violations of the law, and if the State is able to provide documented procedures, processes, and data to demonstrate an effective overall damage prevention enforcement program. The evaluation criteria are attached.

PHMSA urges all States to review the definitions for excavator and excavation in their excavation damage prevention law to ensure the law does not exempt anyone from the reporting

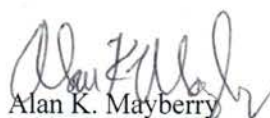
requirements of 49 USC § 60114 and 49 CFR Part 198.55. An excavator is defined in 49 CFR Part 196.3 as “any person or legal entity, public or private, proposing to or engaging in excavation.” According to 49 CFR Part 198.55 (a)(6)(iii), an excavator who causes damage to a pipeline facility:

- A. Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and
- B. If the damage results in the escape of any PHMSA-regulated natural or other gas or hazardous liquid, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.

Excavation damage continues to be a leading cause of hazardous liquid and natural gas pipeline incidents resulting in fatalities, serious injury, and environmental damage. Damaging a pipeline during excavation poses a serious safety risk to excavators, the public living and working in proximity to the excavation site, and the environment.

PHMSA strongly believes that effective damage prevention programs—including enforcement—are best addressed at the State level. Nationwide statistics show that effective enforcement of State excavation damage prevention laws reduces excavation damage and pipeline incidents, resulting in increased safety. We applaud the State of Maryland’s success in developing and sustaining an effective damage prevention enforcement program, and will continue to support your efforts. If you have any questions or need additional information, please contact our Damage Prevention Team by email at [excavation.enforcement@dot.gov](mailto:excavation.enforcement@dot.gov) or phone at (804) 556-4678.

Sincerely,



Alan K. Mayberry  
Associate Administrator for Pipeline Safety

Enclosure

cc: The Honorable Larry Hogan, Office of the Governor, State of Maryland  
W. Kevin Hughes, Chairman, Maryland Public Service Commission  
John Clementson, Assistant Chief Engineer, Maryland Public Service Commission  
Matt Ruddo, Director, Customer Relations, One Call Concepts



**United States Department of Transportation (USDOT)**  
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**Effective January 1, 2016**

**Background**

49 USC § 60114 provides the United States Department of Transportation with back stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines in a state that has failed to adequately enforce its excavation damage prevention or one-call laws.

PHMSA published a Final Rule on July 23, 2015 that establishes

1. Criteria and procedures for determining the adequacy of state pipeline excavation damage prevention law enforcement programs
2. An administrative process for making adequacy determinations
3. Federal requirements PHMSA will enforce in states with inadequate excavation damage prevention law enforcement programs
4. The adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised

**Criteria to be used to Evaluate State Damage Prevention Programs**

1. Does the state have enforcement authority including civil penalties?
2. Is there a designated enforcement body?
3. Is the state using its authority and making enforcement records available to the public?
4. Does the state have a reliable means of learning about damages?
5. Does the state have damage investigation practices that are adequate to determine the at-fault party when damage occurs?
6. At a minimum, does state law require:
  - a. Excavators must call 811 before digging
  - b. Excavators must “respect the marks”
  - c. If damage to a pipeline occurs...
    - i. Excavator must report damage to operator at earliest practical moment
    - ii. If release occurs, excavator must call 911
7. Are exemptions from the DP law limited? Written justification of exemptions is required.

## Administrative Process for States to Contest Notices of Inadequacy

1. PHMSA issues a notice of inadequacy to the state in accordance with 49 CFR 190.5
2. State will have 30 days to submit written response  
Mail responses to:  
Alan Mayberry  
Acting Associate Administrator for Pipeline Safety  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE, Suite E22-207  
Washington, DC 20590
3. PHMSA issues a final decision to states that contested a notice of inadequacy
4. State may petition PHMSA to reconsider at any time following a finding of inadequacy; PHMSA will respond not later than the date of the next annual review
5. States that fail to establish an adequate enforcement program within five years of effective date of final rule may be subject to 4% reduction in base grant funding

## Federal Standard for Excavators

1. Call 811 before excavating
2. Wait for pipeline operators to establish and mark the location of underground pipelines before excavating
3. Excavate with proper regard for the marks, take all practicable steps to prevent excavation damage
4. Make additional use of one-call as necessary
5. Any contact with pipelines must be reported to operator at earliest practical moment
6. If there is a release, excavator must call 911

There are no exemptions in the new regulation for calling 811 prior to excavation. PHMSA understands many states have one-call law exemptions and will be considerate of those exemptions when undertaking Federal enforcement action.

## For More Information

<http://phmsa.dot.gov/pipeline/safety-awareness-and-outreach/excavator-enforcement/>

## Contact Our Damage Prevention Team

Our team of damage prevention professionals, Sam Hall, Annmarie Robertson, and Steve Fischer are available to answer questions pertaining to this final rule, state one call laws, and damage prevention. They may be reached at [excavation.enforcement@dot.gov](mailto:excavation.enforcement@dot.gov).



## **APPENDIX E**

# **Examples of Damage to Critical Underground Facilities in Maryland**



## Examples of Damage to Critical Underground facilities in Maryland

### Legend

- **A1** – Typical gas line damage when Mechanical Grading Equipment scrapes the top of an underground gas line. No “Miss Utility Ticket” was called in by the Excavator in this damage. This damage led to a \$2,000.00 fine and training.
- **A2** – A communications cable was hit when a mechanical auger was used to excavate a hole for a large signpost. There was a “Miss Utility Ticket” called in by the excavator, but they excavated without properly test pitting the underground facility before using mechanized equipment for their excavation. This damage led to a \$4,000.00 fine and training.
- **A3 & A4** – The excavator had a valid active “Miss Utility Ticket” on this project. Picture A3 shows there were gas marks in the vicinity of the excavation and a gas meter was visible on the house near the excavation. The contractor assumed it was alright to excavate with a mechanical auger, since he was several feet away from the marks.

When the auger was pulled out of the excavation in picture A-4, the tracer wire and gas service was intertwined in the auger. A simple test pit would have shown the exact location of the gas service and would have avoided the damage to the underground facility. This damage led to a \$3,000.00 fine and training.

- **A5, A6 & A7** – This contractor began excavating for a septic system (picture A5) without a “Miss Utility Ticket”; and did so with clear evidence (Picture A6) that gas service existed to this home. This was evidenced by a visible gas meter on the side of the structure (picture A6) which was approximately twenty feet from their excavation. The result was a damaged gas service (picture A7). This damage led to a \$3,000.00 fine and training.



- **A8 & A9** – These two pictures show damage to a 2” gas line in a mass grading operation where the mechanical grading equipment completely severed the gas line. The blue clamp shown in the picture was used by the gas provider to temporarily stop the flow of gas, which could have led to a possible ignition. Once the gas valves were turned off, the gas provider was able to repair the damaged line. This damage was caused by the contractor’s failure to get a “Miss Utility Ticket” before beginning their excavation. This damage resulted in a \$2,000.00 fine and training.
- **A10** – This gas service was struck when a contractor was excavating to remove and replace underground water lines. The contractor had a “Miss Utility Ticket” on this project and marks for underground gas and electric were present, but the contractor failed to test pit those underground facilities before performing his excavation. This damage resulted in a \$4,000.00 fine and training.
- **A11, A12, A13 & A14** – These four pictures show a site where the contractor did not call “Miss Utility” before beginning his excavation. Once they mobilized the site there was clear evidence that underground facilities existed on the site in the form of fire hydrant depicting underground water lines. They began excavating without a “Miss Utility Ticket” and then found underground communications cable in plastic conduit in the same area of the underground storm and sanitary sewer lines they were installing.

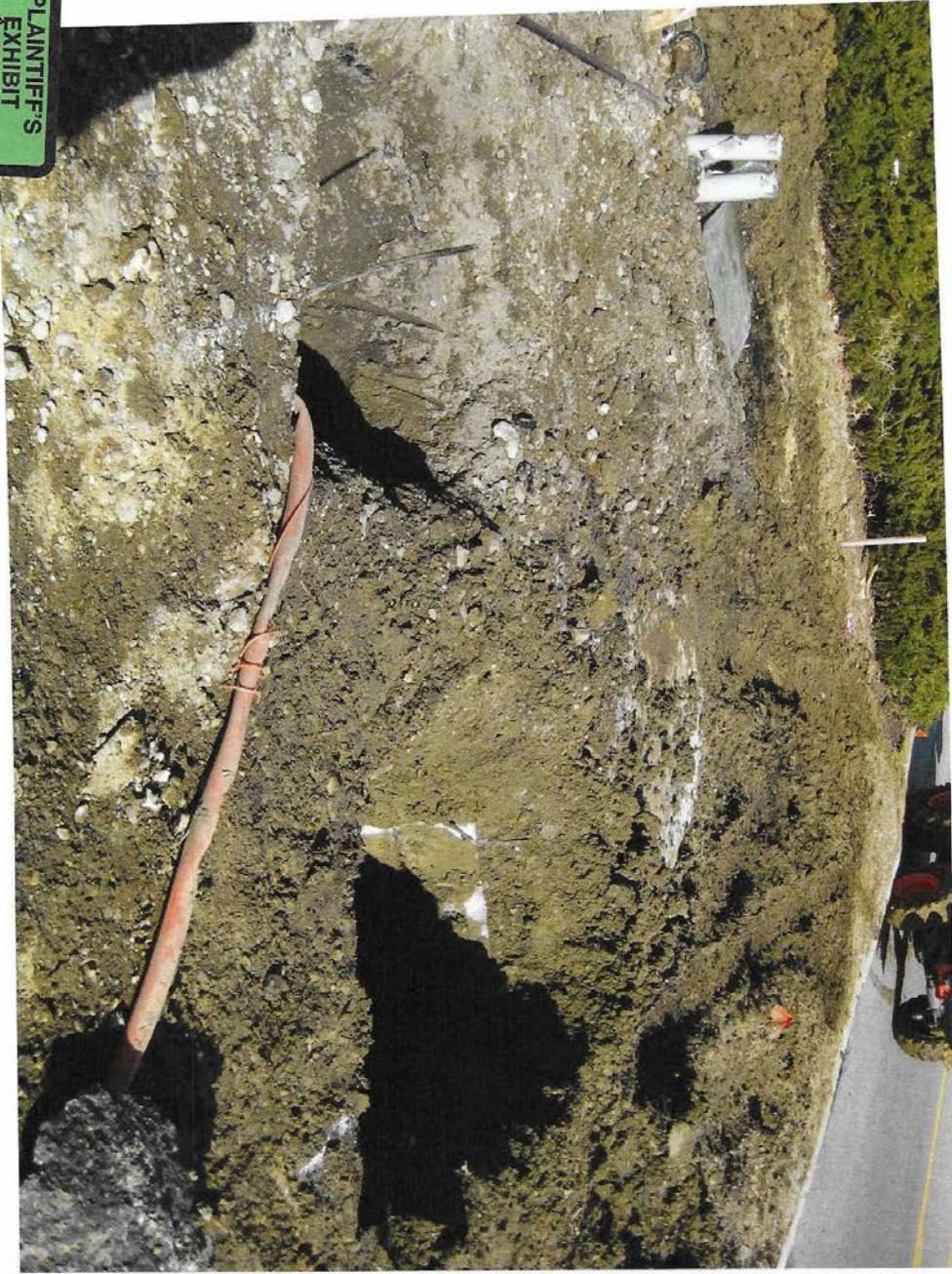
Even then, no call was made to “Miss Utility”. Instead, they chose to begin moving those communications lines out of their way, which severely damaging the plastic conduit and eventually damaging the communications cable in the conduit. When the facility owner happened upon the site and found this damage, the contractor called in an “Emergency Ticket” to “Miss Utility”.

There were four violations of Title 12 in this instance. (1) No “Miss Utility Ticket”; (2) Clear Evidence of Underground Facilities, (3) lack of notification to the facility owner when they damaged the underground facility and (4) misuse of the “Emergency Notification” subtitle of Title 12. This damage resulted in \$6,000.00 in fines and training.



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A1

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A2

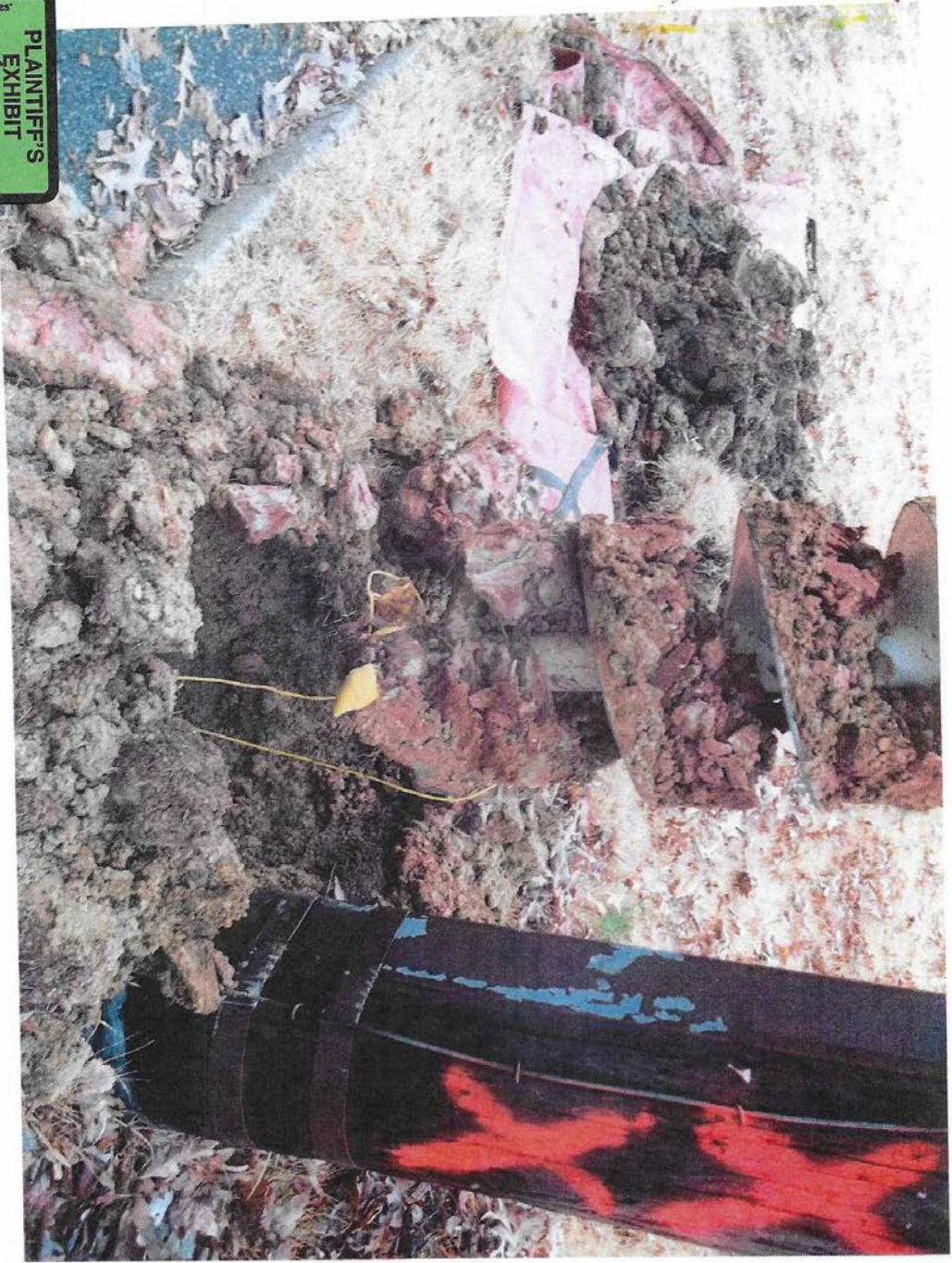


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A3





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A4







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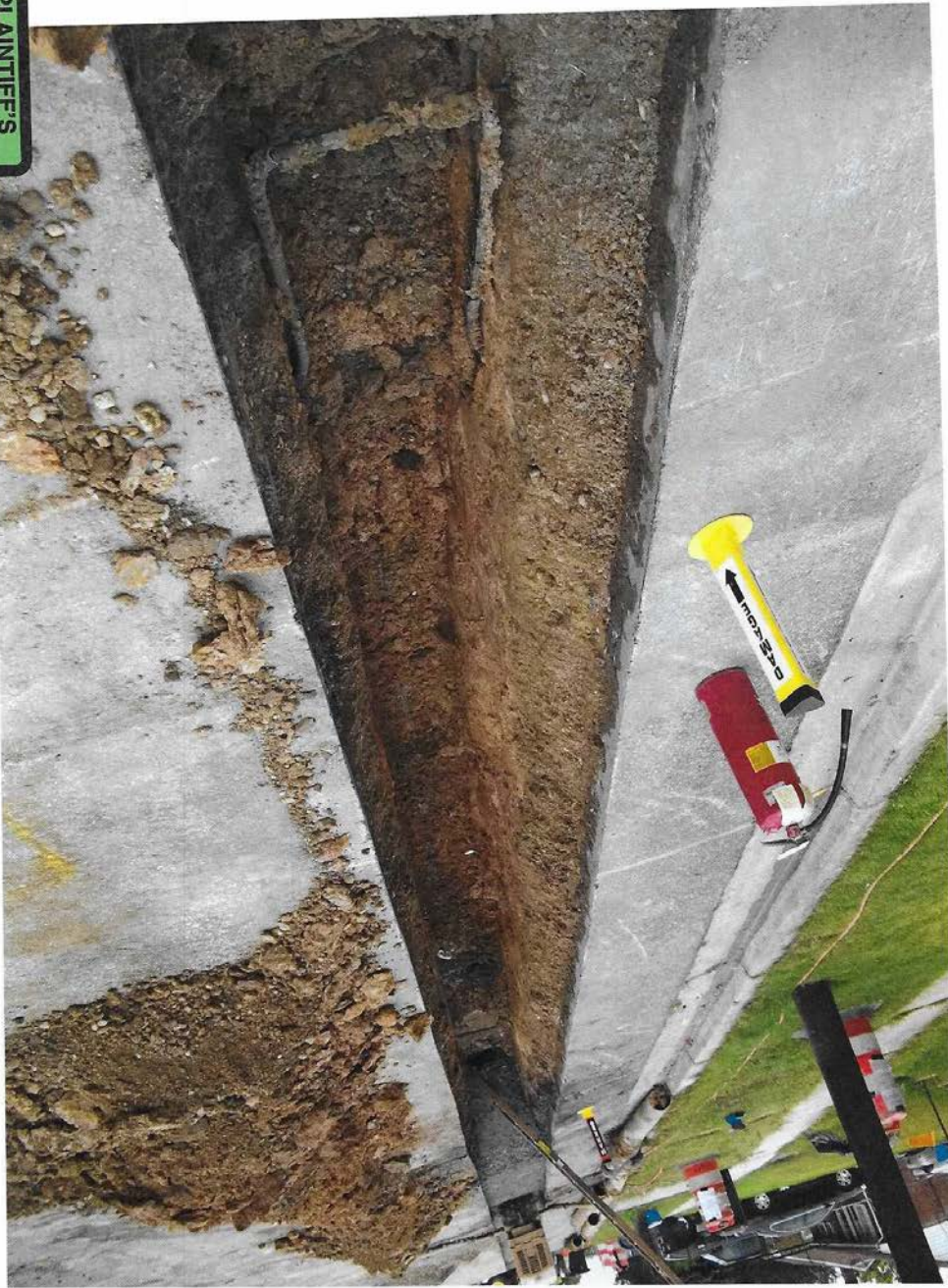


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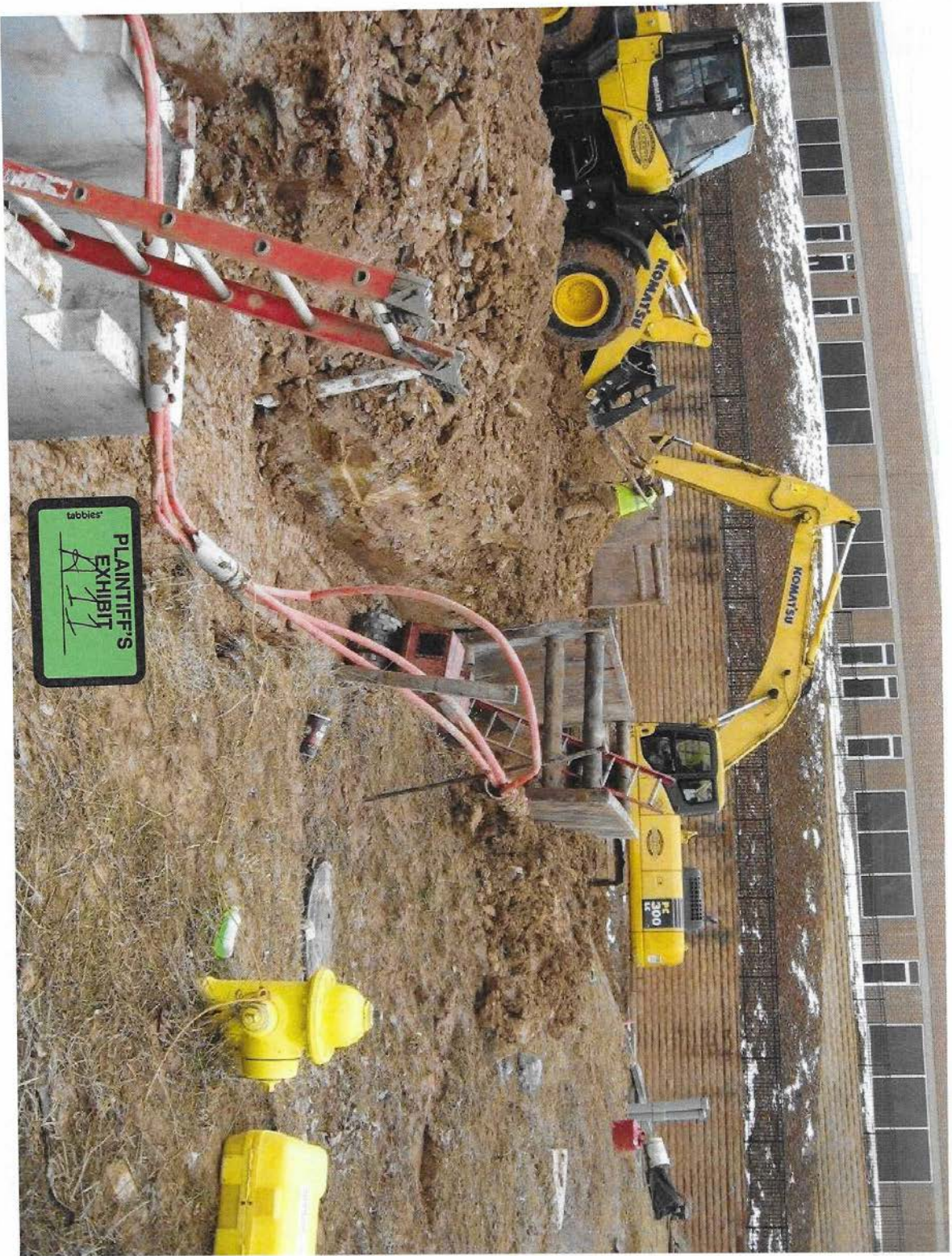
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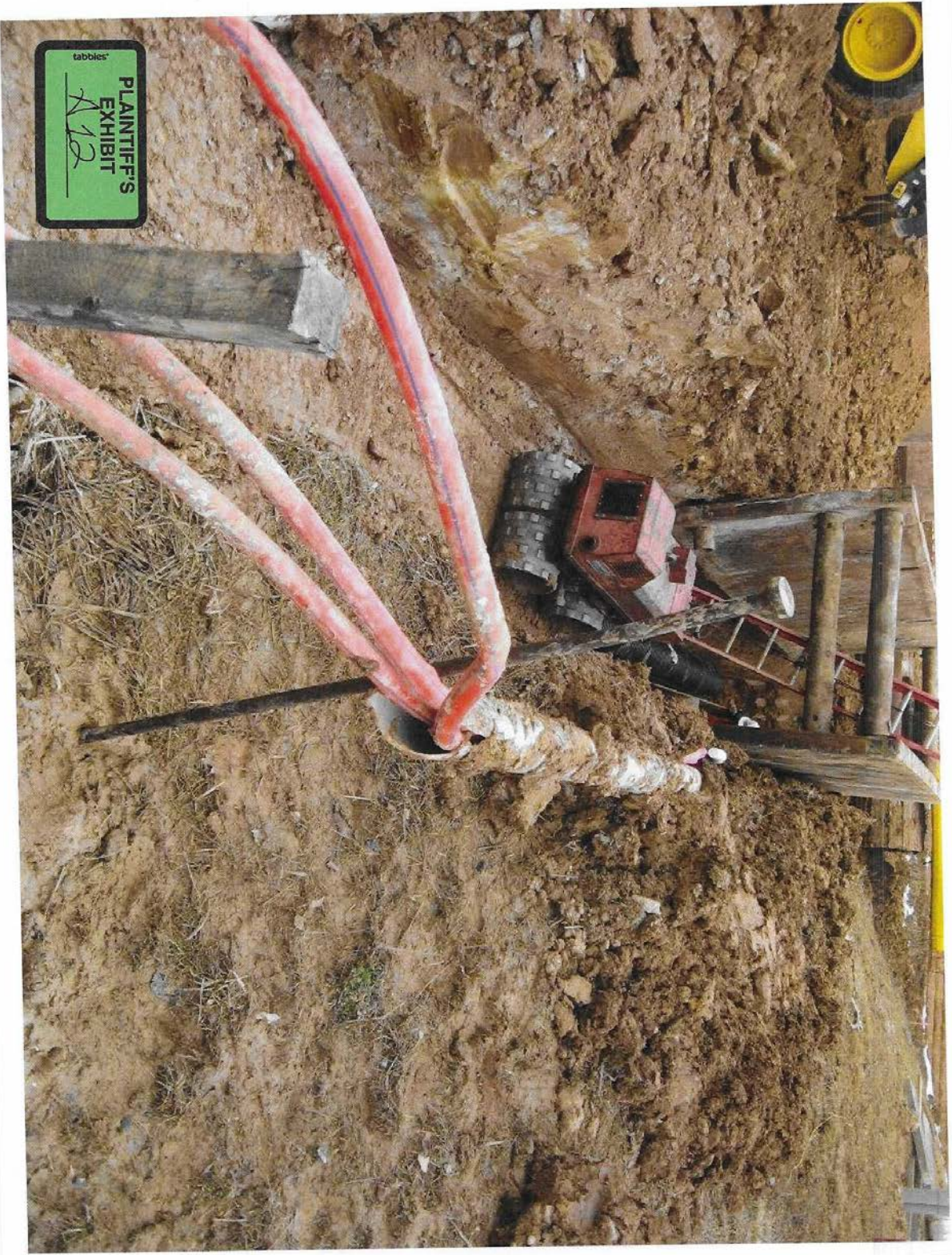
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A10









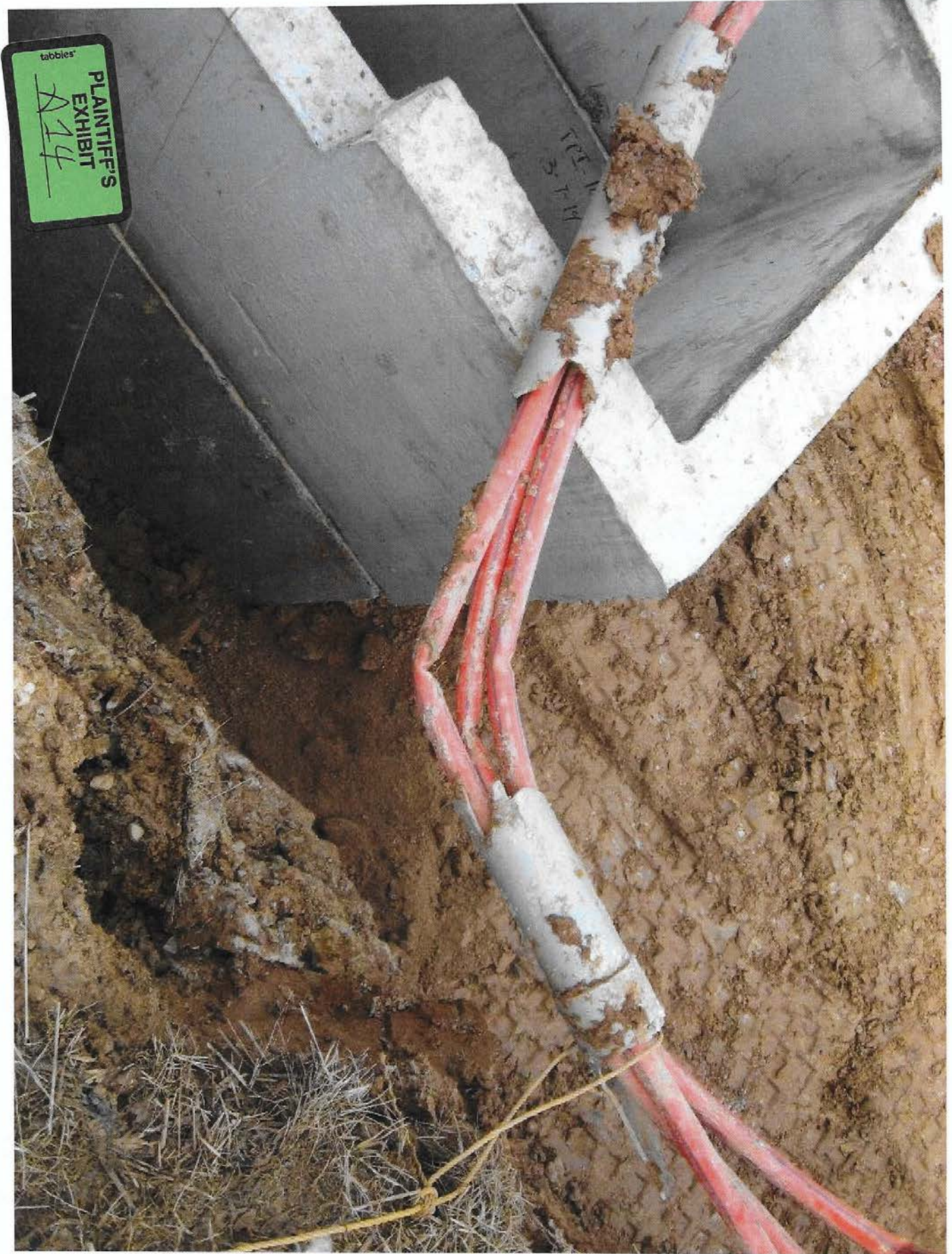


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A12









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A14

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**Call before you dig.**