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New Jersey Administrative Code

TITLE 14. PUBLIC UTILITIES

CHAPTER 2. UNDERGROUND FACILITIES: ONE-CALL DAMAGE PREVENTION SYSTEM

N.J.A.C. 14:2 (2022)

CHAPTER AUTHORITY:

N.J.S.A. 48:2-73 et seq.

14:2-1.1 Scope and applicability

(a) This chapter implements the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq.

(b) This chapter governs the following, as these terms are defined at N.J.A.C. 14:2-1.2:

1. The Board-designated One-Call System Operator;
2. Operators;
3. Excavators; and
4. Responsible contractors.

(c) This chapter establishes the one-call damage prevention system (also called the One-Call System). The One-Call System receives information from excavators that plan to perform excavation or demolition, and relays that information to those persons that own, operate, or control the operation of underground facilities, and have registered with the One-Call System operator. This chapter is intended to ensure that underground facilities are marked to enable excavators to avoid damaging underground facilities.

(d) This chapter applies to a homeowner as follows:

1. A homeowner that owns only residential underground facilities, including, but not limited to, an underground sprinkler system or an underground structure for lighting, is excluded from the definition of "operator," and such a homeowner is not subject to the requirements for operators at N.J.A.C. 14:2-4; and
2. Any homeowner that performs excavation or demolition is acting as an excavator and therefore shall comply with all requirements of this chapter that apply to excavators, including the requirement at N.J.A.C. 14:2-3.1 for notice to the One-Call center prior to excavation or demolition.

(e) This chapter does not affect or apply to the requirements for identification of utility equipment under N.J.A.C. 14:3-2.5.

14:2-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1.

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"Act" means the Underground Facility Protection Act.

"Business day" means any day other than Saturday, Sunday, or a State recognized holiday.

"Damage" means any impact or contact with an underground facility, its appurtenances or its protective coating or any weakening of the support for the facility or protective housing, including, but not limited to, a break, leak, dent, gouge, groove, or other damage to the facility, its lines, or their coating or cathodic protection.

"Emergency" means:

1. Any condition constituting a clear and present danger to life, health or property caused by the escape of any material or substance transported by means of an underground facility, or by the interruption of a vital communication or public service that requires immediate action to prevent or mitigate loss or potential loss of the communication or public service; or
2. Any condition on or affecting a transportation right-of-way or transportation facility that creates a risk to the public of potential injury or property damage.

"Excavate," "excavating," "excavation," or "demolition" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosive, and includes, but is not limited to, drilling, grading, boring, milling to a depth greater than six inches, trenching, tunneling, scraping, tree and root removal, cable or pipe plowing, fence post or pile driving, and wrecking, razing, rending, or removing any structure or mass material, but does not include routine residential property or right-of-way maintenance or landscaping activities performed with non-mechanized equipment, excavation within the flexible or rigid pavement box within the right-of-way, or the tilling of soil for agricultural purposes to a depth of 18 inches or less.

"Excavator" means any person performing excavation or demolition, including a homeowner or person performing excavation or demolition on a residential property on behalf of a homeowner.

"Hand digging" means any excavation involving non-mechanized tools or equipment, including, but not limited to, digging with shovels, picks, probe bars and manual post-hole diggers.

"Mark" means any line, arrow, curve, whiskers, flag, stake, or other symbol, placed or made as part of a markout.

"Markout" means letters, symbols and marks, as defined in this section, placed on the ground or other surface in order to show the location and characteristics of an underground facility.

"Mechanized equipment" means equipment powered by a motor, engine, or hydraulic, pneumatic or electrical device, including, but not limited to, trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, and other equipment used for plowing-in cable or pipe, but does not include tools manipulated solely by human power.

"Nominal" means, in relation to the size of a pipe or other underground facility, a stake, or other object, the commonly used name of the size of the object, rather than the actual size of the object. For example, since dimensional lumber is named based on its size before drying and planing, the nominal or common-named sizes of dimensional lumber are usually expressed in terms of the nearest inch, regardless of the actual size of the lumber. Thus, a board that is two by four inches in nominal size is closer to 1 1/2 inches by 3 1/2 inches in actual size.

"One-Call Damage Prevention System" or "system" means the communication system established pursuant to N.J.S.A. 48:2-76.

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"One-Call incident" means any of the following, if it involves an underground facility and results from excavation or demolition:

1. The death of a person;
2. A serious disabling or incapacitating injuries to one or more persons, including employees or contractors of an excavator or underground facility operator;
3. The evacuation of a building that normally is occupied by more than 25 people;
4. The evacuation of a school, hospital, public transit station, or similar public building;
5. Damage to the property estimated at more than \$ 122,000;
6. Damage to the property of the underground facility operator, which materially affects electric, gas, water or wastewater service to the public;
7. A major disruption of traffic, business, media operations, transportation, or any other vital communication or public service;
8. A significant environmental impact;
9. An event that attracts the presence of media personnel at the event, or that attracts telephone or other contact from media personnel at the time of the event; or
10. Any other occurrence similar to those at 1 through 9 above, which has a significant impact on community or public safety functions.

"One-Call System operator" or "System operator" means the person, as defined at N.J.A.C. 14:3-1.1, that the Board has designated to operate the One-Call Damage Prevention System. The System operator's duties are detailed in a tariff, approved by the Board.

"Operator" means a person owning or operating, or controlling the operation of, an underground facility, but shall not include a homeowner who owns only residential underground facilities, such as an underground lawn sprinkler system or an underground structure for a residential low-voltage lighting system.

"Person" means any individual, firm, joint venture, partnership, corporation, association, State, county, municipality, public agency or authority, bi-state or interstate agency or authority, public utility, cooperation association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

"Probe bar" means a rigid bar that is pushed through the earth in order to determine the exact location of underground facilities.

"Rented equipment" means mechanized equipment which is rented complete with its operator for use in an excavation or demolition.

"Rented equipment operator" means a person that performs excavation or demolition using rented equipment.

"Responsible contractor" means a person that takes responsibility for ensuring that excavation or demolition that is performed by a rented equipment operator complies with this chapter.

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"Routine" means an activity which is conducted on a cyclical basis, such as annually or seasonally, which is unlikely to result in damage to an underground facility.

"Routine maintenance of residential property or of a right-of-way" means an activity which:

1. Is repeated on a cyclical basis, such as annually or seasonally;
2. Is conducted on a residential property or a right-of-way;
3. Is conducted with a hand tool and without the use of mechanized equipment, as defined in this section; and
4. Is unlikely to result in damage to any underground facility.

"Site" means the specific place where excavation or demolition is performed or is to be performed and shall be identified by street address referenced to the nearest intersecting street and sub-division name, if applicable, as well as by lot and block number, if available, and by kilometer or mile marker for railways. The boundaries of a site are determined by the excavator that will be doing the excavation or demolition.

"State department or agency" means any department, public authority, public agency, public commission, or other political subdivision of the State, including any county, municipality or political subdivision thereof.

"Terrestrial LiDAR (Light Detection and Ranging)" means an optical sensing technology that acquires XYZ coordinates of numerous points on land by emitting laser pulses toward these points and measuring the distance from the device to the target.

"Underground facility" means any public or private personal property:

1. Which is buried, placed below ground, or submerged on a right-of-way, easement, public street, other public place or private property; and
2. Which is being used, or will be used:
 - i. For the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, or traffic control; or
 - ii. For the transportation of a hazardous liquid regulated pursuant to 49 U.S.C. §§ 60101 et seq.

This term does not include storm drains or gravity sewers. For the purpose of this definition, "personal property" means a single conduit, or multiple conduits of the same facility type within a rigid envelope such as a concrete envelope. This envelope shall be considered one facility for the purposes of these rules, except as otherwise specifically provided.

"Whiskers" means a small sheaf of plastic fibers, bent double and fastened together at the bent end, used to create a marker that may be used in place of paint under N.J.A.C. 14:2-5.2(c).

14:2-2.1 Duties of One-Call Damage Prevention System operator

(a) The System operator shall operate a one-call center that is open 24 hours per day, seven days per week, and serves the entire State. The telephone number for the One-Call center shall be 811 in New Jersey, or 1-800-272-1000 for out-of-State callers.

(b) The System operator shall staff the one-call center with representatives that will do all of the following:

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1. Receive and record the notice of intent to excavate provided under N.J.A.C. 14:2-3.1;
2. Assign a confirmation number to each notice of intent to engage in an excavation;
3. Inform the excavator or responsible contractor of the confirmation number;
4. For each notice of intent, maintain a register showing the name, address, and telephone number of the excavator or responsible contractor, the site to which the notice pertains, and the assigned confirmation number;
5. Promptly transmit to the appropriate operator(s) the information received from an excavator or responsible contractor regarding intended excavation or demolition;
6. Maintain a record of each notice of intent, for seven years from the date of the System operator's receipt of the notice; and
7. Provide to the excavator or responsible contractor the names of the operators who will be notified by the One-Call center of the intended excavation.

(c) The System operator shall provide a form to excavators for the purpose of reporting a condition or configuration which has the potential to pose a danger to health and safety, in accordance with N.J.A.C. 14:2-3.4(d). Once this form is completed, the System operator shall send the completed form to the appropriate operator, in conformance with the System operator's tariff.

14:2-2.2 Designation and term of One-Call Damage Prevention System operator

- (a) The Board shall designate a System operator who shall operate the One-Call Damage Prevention System in accordance with a tariff approved by the Board.
- (b) The term of the System operator shall be five years, but the Board may rescind, extend, or modify this designation if it determines, that a modification is required for the operation of the System in conformance with N.J.S.A. 48:2-73 et seq., this chapter, and its Board-approved tariff.
- (c) In the final year of a System operator's term, the Board shall advertise the System operator position in the New Jersey Register and in newspapers of general circulation and comply with all applicable rules of the New Jersey Department of the Treasury.
- (d) The Board shall accept applications and shall designate a person as the System operator for a term, consistent with the New Jersey Department of the Treasury guidelines. In choosing a System operator, the Board shall select the applicant that will best operate the System to achieve the purposes of the Underground Facility Protection Act, in accordance with N.J.S.A. 52:34-12 and N.J.A.C. 17:12.
- (e) The Board shall announce its choice of System operator for the next term at least three months prior to the expiration of the existing term.

14:2-3.1 Notice of intent to excavate--timing

(a) A person shall not perform excavation or demolition, as defined at N.J.A.C. 14:2-1.2, unless the person performing the excavation or demolition, or a responsible contractor, has provided notice of the excavation or demolition to the One-Call center by dialing 811 in New Jersey, out-of-State, 1-800-272-1000, or by electronic

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notice as directed by the One-Call System operator in accordance with its Board-approved tariff. Requests provided electronically or through any procedure other than that directed for use by the One-Call System operator shall not constitute notice in compliance with this section.

(b) An excavator or responsible contractor, as defined at N.J.A.C. 14:2-1.2, shall notify the One-Call center of the intent to engage in any excavation or demolition not less than three business days before beginning the excavation or demolition, and not more than 10 business days prior to beginning the excavation or demolition, except if the excavation or demolition is necessary because of an emergency, as defined at N.J.A.C. 14:2-1.2. An excavator that performs emergency excavation or demolition shall comply with the notice requirements at N.J.A.C. 14:2-3.6.

(c) Notice provided in accordance with (a) above, for an excavation or demolition that is commenced within 10 business days after the notice, shall remain valid for 45 business days from the notification, provided that the excavator maintains the markout that is made by an operator. Any excavation or demolition continuing after the 45 business days shall require a new notification that meets the requirements at (a) above.

(d) If the excavation or demolition is not commenced within 10 business days after notice is provided to the One-Call center in accordance with (a) above:

1. The notice shall no longer be valid;
2. The excavator shall not perform any excavation or demolition on the site until the excavator or responsible contractor submits a new notification to the One-Call center; and
3. The new notification shall comply with (a) above in all respects; that is, the excavator shall notify the One-Call center at least three business days before, but no more than 10 business days before, beginning the excavation or demolition.

(e) By providing notice to the One-Call center, an excavator or responsible contractor assumes responsibility and liability for ensuring that the excavation or demolition is performed in accordance with this chapter and other applicable law.

(f) An excavation that is undertaken in order to repair or replace the vent or filler pipe of an underground heating oil tank or a heating system shall not be subject to the three-business-day advance notice requirement at (a) above, provided it meets all of the requirements at (f)1, 2, and 3 below. Instead, such an excavation may be started immediately after notice to the One-Call center.

1. The excavation is undertaken in response to a service call by a customer;
2. The excavation or demolition uses only non-mechanized equipment; and
3. The excavation begins after October 1 and ends before April 30 of the following year.

(g) A routine excavation that is undertaken for pest management purposes on residential property shall be subject to the three-business day advance notice requirement under (a) above, the first time the excavation is performed. However, the excavation may be performed a second and subsequent times without notice to the One-Call center, provided that all of the following requirements are met:

1. The excavation is performed every time by the same excavator that provided notice to the One-Call center;
2. The excavation shall be the same type of work, shall be within the extent of work and within the depth field set forth in the original notice to the One-Call center;

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3. The excavation meets the definition of "routine"; and
4. The excavation is performed solely for pest management purposes.

14:2-3.2 Notice of intent to excavate--contents, perimeter marking

(a) An excavator or responsible contractor shall provide notice of a planned excavation or demolition to the One-Call center by telephone (dial 811 or 1-800-272-1000), or by electronic notice as directed by the One-Call System Operator in accordance with its Board-approved tariff. Requests provided electronically or through any procedure other than that directed for use by the One-Call System operator shall not constitute notice in compliance with this section.

(b) An excavator or responsible contractor shall provide all of the following in its notice to the One-Call center:

1. The name and telephone number of the person notifying the One-Call center, including the contact information of a person knowledgeable about the excavation to be performed;
2. The following information regarding the excavator, any rented equipment operators that will be used, and the responsible contractor, if any:
 - i. Name and address;
 - ii. Office telephone numbers and e-mail addresses; and
 - iii. The field telephone number and, if available, field e-mail or text message addresses and/or facsimile numbers;
3. The name, address and telephone number, and e-mail address if available, of the person for whom the excavation or demolition is to be performed;
4. The starting time and date of the planned excavation or demolition;
5. A description of the intended excavation or demolition, including the approximate depth of the excavation or demolition; and
6. A description of the site, sufficient to enable the operator to accurately determine the location and boundaries of the site. The excavator shall utilize as many of the following methods as are necessary to ensure that the operator can accurately identify the site:
 - i. The street address of the site;
 - ii. The block and lot of the site;
 - iii. A description of any white perimeter markings the excavator has made in accordance with (c) below; and/or
 - iv. On large parcels of land where white paint is used, GPS coordinates may be used, in decimal degrees, to further aid in identifying the area of excavation.

(c) Where appropriate, to clearly identify the site of a planned excavation or demolition, an excavator or responsible contractor may choose to mark the perimeter of the site in white, prior to notifying the One-Call center. White perimeter marking is encouraged in order to minimize unnecessary marking and locating by the

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operators, for example to indicate small sites, nonlinear excavations, and spot excavations such as soil borings, mailboxes, sign posts, or tree plantings.

(d) The excavator or responsible contractor shall determine the size and shape of the site based on the planned excavation or demolition. In order to avoid unnecessary markouts, the site shall be the minimum size necessary to safely accommodate the planned excavation or demolition.

(e) If an excavator chooses to mark the site perimeters pursuant to (c) above, the excavator shall:

1. Use white paint or other appropriate white marking materials such as white flags or stakes;
2. Mark the site boundaries in a manner that is reasonably calculated to enable an operator to determine the site boundaries with sufficient accuracy so that the operator can comply with the markout provisions at N.J.A.C. 14:2-5;
3. Ensure that the white perimeter markings do not interfere with traffic or pedestrian control; and
4. If multiple excavation or demolition sites are marked in one area, each site shall be numbered, and the excavator shall provide the numbers to the One-Call center.

14:2-3.3 Excavators--onsite requirements

(a) An excavator or responsible contractor shall:

1. Not operate any mechanized equipment within two feet horizontally of the outside wall of any underground facility marked in accordance with this chapter, unless the underground facility has been first located by hand digging. Mechanized equipment shall be used with proper care and under adequate supervision to avoid damage to the underground facility;
2. Plan the excavation or demolition with reasonable care so as to avoid damage to, and minimize interference with, underground facilities;
3. Use reasonable care during excavation or demolition to avoid damage to, or interference with, underground facilities, including protecting each underground facility from freezing, traffic, and/or other loads or hazard in accordance with (b) below;
4. After commencement of excavation or demolition, protect and preserve the marking, staking, or other designation of an underground facility until the marking, staking, or other designation is no longer necessary for safe excavation or demolition;
5. Provide identification in the form of company credentials or a State-issued ID to Board staff upon request; and
6. Provide a paper or electronic copy of the One-Call notification to Board staff upon request.

(b) At all times throughout the course of an excavation or demolition, an excavator shall also provide adequate physical support of all underground facilities on the site, as follows:

1. An excavator shall comply with all reasonable support specifications that the operator provides pursuant to N.J.A.C. 14:2-4.2(e);

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2. If the operator does not provide support specifications pursuant to (b)1 above, the excavator shall provide support in accordance with generally accepted engineering practice. The support shall be at least equivalent to the support to the underground facility prior to the excavation;

3. The excavator shall maintain the physical support during excavation, backfilling and, if necessary, after backfilling is completed; and

4. The operator may, by mutual agreement with the excavator, choose to provide the physical support.

(c) If a representative of an operator determines that an excavator is not adequately protecting or supporting the facility, resulting in an unsafe condition or situation relating to the excavation or demolition, the representative may require the excavator to suspend the excavation or demolition until the problem is corrected. The representative may impose this requirement verbally only if the representative believes that an emergency exists, and shall provide a written confirmation of the verbal directive to suspend work as soon as feasible thereafter. In all other situations, the representative shall provide the directive to suspend the excavation or demolition in writing.

14:2-3.4 Responsible contractors

(a) If rented equipment, as defined at N.J.A.C. 14:2-1.2, will be used for an excavation or demolition, either the rented equipment operator or a responsible contractor shall notify the One-Call center in accordance with N.J.A.C. 14:2-3.1 and 3.2. The person who notifies the One-Call center shall be responsible and liable for ensuring that all excavation or demolition performed with rented equipment complies with this chapter.

(b) Each responsible contractor shall keep all logbooks and records required by this chapter for at least seven years, and shall make them available to the Board or Board staff upon request.

(c) A responsible contractor that notifies the One-Call center under N.J.A.C. 14:2-3.1 and 3.2 shall do all of the following:

1. Provide information as required by the One-Call center regarding all rented equipment that will be used in the excavation or demolition;

2. Wait the three business days required under N.J.A.C. 14:2-3.1 prior to performing any excavation or demolition on the site; and

3. Notify the One-Call center of each rented equipment operator that performs excavation or demolition on a site, specifying when the rented equipment operator begins working on the site; and

4. Notify the One-Call center when each rented equipment operator stops working on the site.

(d) At any time during the period that a One-Call notice is valid under N.J.A.C. 14:2-3.1(c), the responsible contractor may add or remove one or more rented equipment operators to the site, provided that the responsible contractor notifies the One-Call center before each rented equipment operator performs any excavation or demolition. No additional waiting period is required for the addition of a rented equipment operator under this subsection.

(e) A rented equipment operator shall contact the One-Call center directly to verify that the responsible contractor has notified the One-Call center of the rented equipment operator's participation in the excavation or demolition on the site.

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(f) A responsible contractor shall not permit a rented equipment operator to perform excavation or demolition on a site unless the responsible contractor has notified the One-Call center that the responsible contractor will be working on that particular site.

(g) If a responsible contractor utilizes a rented equipment operator to perform excavation or demolition, the responsible contractor shall do all of the following:

1. Continuously visually monitor all hand digging and locating required under this chapter; and
2. Inspect the excavation or demolition performed by the rented equipment operator at least once each day during which the rented operator is on the site.

(h) The responsible contractor shall maintain all of the following records at the site, available for inspection by the Board or Board staff, throughout the duration of the excavation or demolition:

1. A log, updated daily, of the time and location of all hand-digging and locating performed by the rented equipment operator; and
2. A list, updated daily, of all rented equipment operators performing excavation or demolition on the site and the date and time the One-Call Center was notified of the rented equipment operator's work on the site.

14:2-3.5 Excavation or demolition in response to an emergency

(a) If an excavator undertakes an excavation or demolition in response to an emergency that does not permit compliance by the excavator with the notification requirements of N.J.A.C. 14:2-3.1, the excavator shall comply with this section.

(b) An excavator that is subject to this section shall notify the One-Call center of an emergency excavation or demolition as soon as reasonably possible without causing a delay in addressing the emergency, and shall include in the notice a description of the nature of the emergency and provide contact information of a person knowledgeable of the excavation to be performed.

(c) In a case where the excavator must perform excavation or demolition in order to address the emergency, the notice to the One-Call center shall also include a brief explanation of the circumstances that prevented the excavator from providing notice in accordance with N.J.A.C. 14:2-3.1.

(d) An excavator that performs excavation or demolition in response to an emergency shall take all reasonable precautions to protect any underground facilities that may be located at the site of the excavation or demolition.

(e) If an excavation is undertaken in order to repair or replace the vent or filler pipe of an underground heating oil tank or a heating system, the excavation may be started immediately after notice has been given to the One-Call center, provided the excavation meets all of the requirements at (e)1 through 3 below:

1. The excavation is undertaken in response to a service call by a customer;
2. The excavation or demolition uses only non-mechanized equipment; and
3. The excavation begins after October 1 and ends before April 30 of the following year.

(f) An excavation performed in accordance with (e) above shall meet all other requirements of this section and this chapter.

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(g) Emergency notifications shall only be valid for the period that the conditions defined at N.J.A.C. 14:2-1.2 exist. If a temporary repair is made and requires additional excavation, a routine markout request is required.

14:2-3.6 Excavators--incident and damage reporting

(a) If an excavator causes or discovers any damage, as defined at N.J.A.C. 14:2-1.2, to a line or pipe carrying natural gas, liquid petroleum, or any other hazardous liquid, the excavator shall immediately call 911, and shall immediately thereafter report the damage to the appropriate representative of the operator. If the excavator cannot reach the operator, the excavator shall report the damage to the One-Call center at 811 in New Jersey, or out-of-State, 1-800-272-1000.

(b) If an excavator causes or discovers any damage to an underground facility that carries anything other than natural gas, liquid petroleum, or another hazardous liquid, the excavator shall immediately report the damage to the appropriate representative of the underground facility operator. Immediately thereafter, the excavator shall report the damage to the One-Call center at 1-800-272-1000 out-of-State, or 811 in New Jersey.

(c) All requirements in this section apply regardless of whether the damage results in an emergency, accident, or a dangerous condition.

(d) If, during excavation or demolition, an excavator causes or discovers any of the following, the excavator may complete and submit to the One-Call center a dangerous condition reporting form:

1. An underground facility that is, in the excavator's judgment, buried at a depth that is insufficient for safety; or
2. Any condition or configuration relating to an underground facility, which, in the excavator's judgment, has the potential to pose a danger to health and safety, and which is not covered pursuant to (a) or (b) above.

(e) The form described under (d) above shall be provided by the System operator in accordance with N.J.A.C. 14:2-2.1(c).

14:2-4.1 Applicability

(a) This subchapter applies to operators, as defined at N.J.A.C. 14:2-1.2, except as specified in this section.

(b) An operator of an underground non-metallic water pipe or non-metallic water distribution facility that was installed prior to November 18, 1994, is exempt from the requirement at N.J.A.C. 14:2-4.2 to mark out the facility, but shall, within three business days of the notice to the One-Call center, cooperate with excavators in reasonable efforts, including a site meeting, to determine the location of the facility. Reasonable efforts, include, to any and all extent possible, ascertaining and/or obtaining information regarding the location of the meter and curb shutoff, closest building penetration to the water meter, the location of service connection to the main, the diameter of the facility, the composition of the facility, company service records, and records that the operator may have.

(c) An operator that is a State department or agency is exempt from the requirement at N.J.A.C. 14:2-4.2 to mark out its facilities in accordance with N.J.A.C. 14:2-4.2 if all of the following criteria are met:

1. The excavation or demolition is conducted on property or a right-of-way owned or controlled by the State department or agency;

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2. The only underground facilities of the State department or agency at the site are traffic signals and lights, or street and highway lights; and their associated electrical feeds, control lines and traffic sensing loops;
3. The excavation or demolition requires a permit from the State department or agency;
4. The required permit is conditioned upon the excavator notifying the One-Call center in accordance with N.J.A.C. 14:2-4.2(a)2;
5. During the permitting process, the State department or agency provides the excavator with plans showing the position and number of its underground facilities on the site; and
6. The State department or agency agrees to cooperate on a continuing basis with the excavator in reasonable efforts to determine the location of its underground facilities, including notifying the excavator of any changes in the position or number of underground facilities after the initial issuance of plans to the excavator.

(d) If a State department or agency chooses to comply with (c) above rather than to mark out its underground facilities in accordance with N.J.A.C. 14:2-4.2(a)2, an excavator shall not be liable for any damage to the State department or agency's underground facilities, provided that the excavator has:

1. Complied with this chapter;
2. Complied with all applicable requirements of the permit described at (c)3 above; and
3. Used reasonable care while excavating.

(e) An operator that is exempt from markout requirements in accordance with (b) or (c) above shall comply with all other requirements in this chapter.

14:2-4.2 Operators--basic requirements

(a) An operator shall ensure that it is fully equipped and available to receive from the One-Call center the information required pursuant to N.J.A.C. 14:2-3.2 regarding a planned excavation or demolition.

(b) If an operator fails to participate in and comply with the requirements of the One-Call Damage Prevention System in violation of N.J.S.A. 48:2-80 and an underground facility of such operator is damaged by an excavator or responsible contractor by reason of the excavator's or responsible contractor's failure to notify the operator because the operator was not a member of the One-Call Damage Prevention System, such operator shall have no right of recovery from the excavator or responsible contractor of any costs associated with the damage to its lines.

(c) Excluding operators that are exempt, in accordance with N.J.A.C. 14:2-4.1(b), any operator that fails to mark, locate, or otherwise provide the position and number of its underground facilities, which may be affected by a planned excavation or demolition, shall be liable for any costs, labor, parts, equipment, and personnel downtime, incurred by an excavator damaging a facility owned, operated, or controlled by the operator.

(d) Within three business days after receiving information from the System operator regarding a planned excavation or demolition, an operator shall provide an electronic positive response to the System operator and do either of the following:

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1. If the operator owns, operates, or controls the operation of any underground facilities on the site, the operator shall mark out the site as required pursuant to N.J.A.C. 14:2-5, except if a facility is exempt from markout requirements pursuant to N.J.A.C. 14:2-4.1(b) or (c); or

2. If the operator does not own, operate, or control the operation of any underground facilities on the site, the operator shall notify the excavator of that fact.

(e) An operator shall provide to the excavator specifications for supporting any underground facility on the site, which requires physical support during excavation or demolition, including the type, strength, and arrangement of the support. In accordance with N.J.A.C. 14:2-3.3, if the parties mutually agree, the operator shall provide such support.

(f) If an operator receives a request from the One-Call center for an emergency markout, the operator shall:

1. Immediately dispatch appropriate personnel to the site in accordance with the emergency provisions at N.J.A.C. 14:2-4.4; or

2. If the operator does not own, operate, or control any underground facilities on the site, the operator shall immediately notify the excavator of that fact. If the operator cannot confirm that the excavator is aware that the operator does not own, operate, or control any underground facilities on the site, the operator shall immediately dispatch appropriate personnel to the site.

(g) The requirements at (f) above shall apply to all operators that receive a request from the One-Call center for an emergency markout, regardless of whether the operators' underground facilities are involved in the emergency or not.

14:2-4.3 Operators--markout records

(a) An underground facility operator shall make a record of each markout that it performs. The underground facility operator shall maintain these records for seven years, and shall make them available to the Board or Board staff upon request.

(b) Each markout record shall include, at a minimum, all of the following:

1. The location of the markout, identified by street address(es) or lot and block number(s), and any other information necessary to enable a person to easily locate the site;

2. The names of all persons who performed the markout, including the names of any contractors;

3. The time and date the markout was performed;

4. The type of markout, as described at N.J.A.C. 14:2-5.3; for example, centerline markout, centerline offset markout, outside dimension markout and/or outside dimension offset markout; and

5. Whether stakes, whiskers and/or flags were used in the markout in addition to paint.

(c) In addition to the markout record required pursuant to (a) above, an operator shall make and maintain a visual record of the markout using photography and other visual documentation. The record shall:

1. Be made in color;

2. Show the entire markout;

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3. Show landmarks in the vicinity of the markout in sufficient detail to enable a person to easily establish the location of the markout; and

4. Be transmitted in a format that includes the date, time, and location of the photograph.

(d) An underground facility operator shall submit any records required under this section to the Board upon request, on paper or electronically, as directed by the Board or Board staff.

14:2-4.4 Operators--accidents and emergencies

(a) Operators shall ensure that employees who are qualified to accept and respond to reports of accidents, damage, and emergencies involving underground facilities, are available at all times of the day and night throughout the year. Each operator shall provide the Board with the names and titles of these qualified response personnel, as part of every report required pursuant to (j) below.

(b) When an operator receives a report of an emergency, the operator shall do all of the following immediately, and in all cases within one hour after learning of the emergency:

1. Dispatch appropriate personnel to the site to assist in locating and protecting underground facilities;
2. Take any other action necessary to assist in minimizing danger and/or damage; and
3. Update the electronic positive response with the appropriate status ("marked," "cleared," or "dispatched").

(c) Each operator shall report any One-Call incident, as defined at N.J.A.C. 14:2-1.2, to the Board in accordance with the reporting procedures for reportable accidents found in the Board's rules for all utilities at N.J.A.C. 14:3-6.4. Should there be any inconsistency between the reporting procedures at N.J.A.C. 14:3-6.4 and those of this subchapter, the more stringent requirement shall govern.

(d) Whenever an operator is notified of a One-Call incident, the operator shall immediately, and in no event later than one hour after notice of the incident, contact the Board's Division of Reliability and Security through email and shall provide the location and a brief description of the incident.

(e) Operators should consider the use of Terrestrial LiDAR, Ground Penetrating Radar, or other surveying technologies to record the scene of a One-Call incident when damage to an underground facility results in property damage amounting to \$ 122,000 or more, or causes bodily injury, or as requested by Board staff.

(f) If the underground facilities of a public utility are affected by an occurrence that meets both the definition of a reportable accident under N.J.A.C. 14:3-6 and a One-Call incident under this chapter, the utility shall comply with the procedures for a reportable accident under N.J.A.C. 14:3-6, and shall also notify the Board in accordance with the requirements for a One-Call incident under (d) above.

(g) As soon as possible after a One-Call incident, and in no case later than 15 calendar days afterwards, the operator shall follow up the initial notice required pursuant to this section with a detailed written report. The written report shall include all significant facts of which the operator is aware regarding the location and cause of the incident, all pictures of the incident, a timeline of events, and the extent of any damage and/or injuries.

(h) Any person who obstructs an inspection or investigation by taking actions that were known or reasonably should have been known to prevent, hinder, or impede an investigation without good cause will be subject to administrative and/or criminal penalties, as allowed by statute.

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(i) Each operator of an underground facility that handles natural gas or hazardous liquids shall submit a "hits report" listing any damage, emergency, or One-Call incident involving the operator's natural gas or hazardous liquids facilities. The report shall be submitted to the Board by the close of business on Tuesday of the week following any two-week period in which any such damage, emergency, or One-Call incident has occurred.

(j) All operators shall submit the following report(s) to the Board, as applicable:

1. An operator with facilities that have sustained any damage, as defined at N.J.A.C. 14:2-1.2, during a quarter shall submit a "hits report," including all damage occurring to its facilities during that quarter. No quarterly report is required from an operator that has had no damage to its facilities during that quarter;
2. Any operator that has had no damage to its facilities during a year shall submit an annual "no hits" report. The "no hits" report shall be submitted on January 30th of each year; and
3. Reports required pursuant to this subsection shall contain the contact information for the qualified response personnel described pursuant to (a) above.

(k) Each operator shall maintain a paper or electronic record of all damage, as defined at N.J.A.C. 14:2-1.2, to its underground facilities, including any damage reported by an excavator in accordance with N.J.A.C. 14:2-3.4, for seven years after the damage occurred.

(l) Reports and records may be submitted to the Board on paper or electronically, except where another method is required pursuant to this chapter or a Board rule or order.

14:2-5.1 General markout provisions

(a) When an operator is required pursuant to N.J.A.C. 14:2-4.2(b) to mark out a site, the operator shall perform the markout in accordance with this subchapter.

(b) When more than one underground facility of the same type is located within a rigid structure or envelope such as a concrete pipe or a conduit, the markout shall indicate the envelope and not the individual underground facilities inside the envelope.

(c) If an excavator has marked the perimeter of a proposed excavation or demolition site with white in accordance with N.J.A.C. 14:2-3.2(c), (d), and (e), an operator shall mark out all of the operator's facilities that lie within the white perimeter marking, and in addition all facilities outside the white perimeter that are within 10 feet of the white marking.

(d) All facilities newly installed by the operator shall be back flagged and marked according to N.J.A.C. 14:2-5.2, upon completion of the installation. If there is a valid notice of intent to excavate in accordance with N.J.A.C. 14:2-3.1 in the scope of the work area where the facilities have been installed, that has not yet reached its "start by" date, the excavator must be notified about the newly installed facilities. This shall be done by updating the positive response.

14:2-5.2 Specifications for marks used in markouts

(a) An operator shall perform all markouts using paint. In addition, if the markout must be made on a non-firm surface including, but not limited to, grass, dirt, gravel, or sand, or if weather or site conditions may make paint difficult to use or see, the operator shall utilize paint, and, in addition, shall utilize stakes and/or flags. If used, the

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location of any stakes or flags shall conform to the diagrams at chapter Appendix A, incorporated herein by reference.

(b) The operator shall ensure that all paint used for markouts has sufficient lasting properties so as to withstand vehicular traffic during the course of the excavation or demolition, but shall be sufficiently removable or degradable with time so as not to be permanent.

(c) If necessary to avoid placing paint on decorative gravel, stone, or pavers, an operator may elect to substitute eight-inch whiskers, as defined at N.J.A.C. 14:2-1.2, for one or more paint marks. The whiskers shall be the appropriate color, shall be laid flat on the ground in the position that would be covered by a paint mark, and fastened to the ground with a nail or other appropriate fastener. The required letter designation code and other numbers and letters may be placed on a flag. An operator shall not use whiskers as a substitute for a stake or flag.

(d) All references in this subchapter to paint shall be construed to include any marking material that makes an equivalent mark and meets all other applicable requirements of this chapter.

(e) An operator shall perform all markouts in a manner that will clearly indicate the location and direction of each underground facility.

(f) An operator shall place all marks used to indicate a particular facility at intervals of 25 feet or less. However, the operator shall place marks closer together than 25 feet, if necessary, to clearly indicate the location and direction of the underground facility. For example, site conditions or directional changes of the underground facility may necessitate a shorter distance between marks in order to clearly indicate the location and direction of an underground facility.

(g) All paint marks used in markouts shall be one to two inches wide and eight to 10 inches long, unless otherwise specified in this chapter. All letters and numbers used in painted markouts shall be six to eight inches high, unless otherwise expressly specified in this chapter.

(h) An operator shall arrange all marks, except for the arrowhead marks in an offset markout, in a line following or paralleling the course of the underground facility. The arrowhead marks used in an offset markout shall be perpendicular to the course of the underground facility.

(i) All markouts shall conform to the diagrams set forth in chapter Appendix A.

(j) Markouts shall indicate the type of underground facility, using the following colors and letter designation codes in Table A below:

Table A

| Facility or Product | Letter Designation Code | Color |
|---------------------|-------------------------|------------------------|
| Water Systems | W | Safety Precaution Blue |
| Slurry Systems | S | Safety Precaution Blue |
| Sewer Lines | S | Safety Green |

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| | | |
|----------------------------------|-----|-------------------------------|
| Telephone and | T | Safety Alert Orange |
| Fiber Optic Cable | FOC | Safety Alert Orange |
| Cable Television | TV | Safety Alert Orange |
| Police and Fire Communications | FA | Safety Alert Orange |
| Electric Power Distribution and | E | Safety Red |
| Traffic Control (communications) | TC | Safety Alert Orange |
| Traffic Control (power) | TC | Safety Red |
| Gas Distribution and | G | High Visibility Safety Yellow |
| Petroleum products, Oil | PP | High Visibility Safety |
| Transmission | | Yellow |
| Steam | ST | High Visibility Safety Yellow |
| Hazardous liquids/Chemicals | CH | High Visibility Safety Yellow |
| Excavation or demolition | - | White |

(k) Markouts shall include the type of outer infrastructure material, where known or reasonably estimated, using the following letter designation codes at Table B below. Composition codes are to appear once per linear markout or every time there is a change in diameter or composition. These letter designation codes will be used in addition to the letter codes at Table A above.

Table B

| | |
|-----|-------------------------------------|
| ABS | Acrylonitrile - Butadiene - Styrene |
| ACP | Asbestos Cement Pipe |
| CI | Cast Iron |
| CMC | Cement Mortar Coated |

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| | |
|------|------------------------------|
| CML | Cement Mortar Lined |
| CMP | Corrugated Metal Pipe |
| CPP | Corrugated Plastic Pipe |
| CU | Copper |
| CWD | Creosote Wood Duct |
| HDPE | High Density Polyethylene |
| MTD | Multiple Tile Duct |
| PLA | Plastic (conduit or pipe) |
| RCB | Reinforced Concrete Box |
| RCP | Reinforced Concrete Pipe |
| RF | Reinforced Fiberglass |
| SCCP | Steel Cylinder Concrete Pipe |
| STL | Steel |
| VCP | Virtrified Clay Pipe |

(l) The operator shall ensure that all colors used in markouts meet the standards in Standard Z535.1-2017 of the American National Standards Institute, Inc., which is incorporated herein by reference, as amended and supplemented, and is available at <https://www.nema.org/Standards/Pages/American-National-Standard-for-Safety-Colors.aspx>.

(m) The operator shall ensure that all flags used in markouts shall be:

1. Made of plastic or other equally durable and weatherproof material;
2. Rectangular, four inches by five inches in nominal size;
3. Attached to a staff that is a minimum of 24 inches long;
4. Not less than 18 inches of the staff of the flag shall be exposed above the surface of the ground;
5. Placed at the top of the staff;

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6. Marked with a letter designation code indicating the type of underground facility in accordance with Table A in (j) above. The letters shall be at least one inch high;
7. Marked with the operator's initials or logo in black letters or symbols at least one inch high; and
8. Marked with the operator's telephone number, the telephone number of the New Jersey One-Call Damage Prevention System operator (811 in New Jersey, or out-of-State, 1-800-272-1000), in letters at least one inch high, and the current web address (URL) of the One-Call Damage Prevention System operator, that may be encoded in a QR code.

(n) The operator shall ensure that all stakes used in markouts shall be:

1. Two inches by two inches by 24 inches in nominal dimension;
2. Colored in accordance with the color coding requirements of this section. The color shall cover the top six inches of the stake;
3. Marked with a letter designation code indicating the type of underground facility in accordance with Table A in (j) above. The letters shall be at least one inch high;
4. Marked with the underground facility operator's initials or logo in black letters or symbols at least one inch high; and
5. Not less than 18 inches of the stake shall be exposed above the surface of the ground.

(o) Stake markouts and plastic flag markouts shall conform to the diagrams in chapter Appendix A, Figures 1 and 6.

(p) Markouts of utility junctions, crossings, changes of direction, dead ends, and other configurations shown in chapter Appendix A, Figure 6, shall comply with the diagrams in Figure 6.

14:2-5.3 Types of markouts

(a) There are four types of markouts, as follows:

1. A centerline markout. A centerline markout is required for an underground facility that is 12 inches or less in nominal outside dimension;
2. A centerline offset markout. A centerline offset markout may be used only when both of the following criteria are met:
 - i. The underground facility is 12 inches or less in nominal outside dimension; and
 - ii. Site conditions make it impossible to adequately markout the centerline of the underground facility;
3. An outside dimension markout. An outside dimension markout is required for an underground facility that is more than 12 inches in nominal outside dimension; and
4. An outside dimension offset markout. An outside dimension offset markout may be used only when both of the following criteria are met:
 - i. The underground facility is more than 12 inches in nominal outside dimension; and

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- ii. Site conditions make it impossible to adequately mark out the centerline or outside walls of the underground facility.

14:2-5.4 Centerline markouts

(a) An operator shall utilize a centerline markout to indicate an underground facility that is 12 inches or less in nominal outside dimension, unless exceptional site conditions would either make it impossible to clearly mark the centerline of the underground facility in accordance with this section, or would make it impossible for the excavator to see the markings in a centerline markout. In a case with such exceptional site conditions, an operator may utilize a centerline offset markout, described at N.J.A.C. 14:2-5.6.

(b) A centerline markout shall meet all of the following requirements:

1. The markout shall consist of paint marks that run parallel to the course of the underground facility, with the eight-inch to 10 inch side of each paint mark over the center line of the underground facility;
2. The marks shall be placed as directly as possible over the center line of the underground facility, and in no case shall the marks be more than 18 inches away from the point on the ground that is directly above the center line of the underground facility;
3. A minimum of three separate paint marks shall be made for each underground facility. Additional marks shall be placed along the course of the underground facility as needed to clearly identify the location of the facility;
4. The marks shall be the appropriate color as indicated in Table A in N.J.A.C. 14:2-5.2; and
5. The appropriate letter designation code from Table A in N.J.A.C. 14:2-5.2, and the nominal outside dimension of the underground facility in inches, shall be centered between the paint strokes. Whenever more than one facility is located within a rigid envelope, the markout shall state the dimension of the envelope, not of the individual facilities.

(c) Illustrations of a centerline markout are set forth in Appendix A, figures 2 and 6.

14:2-5.5 Outside dimension markouts

(a) An operator shall utilize an outside dimension markout to indicate an underground facility that is more than 12 inches in nominal outside dimension, unless exceptional site conditions would either make it impossible to clearly mark the outside walls of the underground facility in accordance with this section; or would make it impossible for the excavator to see the markings in an outside dimension markout. In a case with such exceptional site conditions, an operator may utilize an outside dimension offset markout, described at N.J.A.C. 14:2-5.6.

(b) An outside dimension markout shall meet all general requirements for markouts under N.J.A.C. 14:2-5.1 and 5.2, and in addition shall meet all of the following requirements:

1. The markout shall consist of pairs of parallel paint marks, with marks over each outside wall of the underground facility, but no more than 18 inches from either outside wall of the underground facility;
2. A minimum of three separate pairs of parallel paint marks shall be made for each underground facility; and

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3. The following shall be placed within each pair of parallel linear marks, centered in the space between the two marks:

- i. The appropriate letter designation code from Table A in N.J.A.C. 14:2-5.2;
- ii. Numbers indicating the nominal outside dimension of the underground facility in inches; and
- iii. If a non-firm surface requires stakes and/or flags in addition to paint in accordance with N.J.A.C. 14:2-5.2(a), a stake shall be placed on each paint mark, and a flag shall be centered between the two paint marks, over the required numbers and letters.

(c) Illustrations of an outside dimension markout are set forth in Appendix A, figures 3 and 6.

14:2-5.6 Offset markouts

(a) An operator shall utilize an offset markout only if exceptional site conditions make it impossible to clearly mark the underground facility with a centerline markout pursuant to N.J.A.C. 14:2-5.4 or an outside dimension markout pursuant to N.J.A.C. 14:2-5.5.

(b) An offset markout shall be made with paint on a firm surface.

(c) An offset markout symbol shall consist of the following:

1. Two T-shaped paint marks that:

- i. Are one inch to two inches in width and eight inches to 10 inches in length;
- ii. With the top of each T running parallel to the centerline of the underground facility; and
- iii. With an arrowhead on the leg of each T, pointing in the direction of the underground facility;

2. The following shall appear above the arrow:

- i. The appropriate letter designation code from Table A in N.J.A.C. 14:2-5.2;
- ii. Numbers indicating the nominal outside dimension of the underground facility in inches; and
- iii. Numbers indicating the distance from the centerline or outside wall of the underground facility to the top line of the T, measured in inches; and

3. The letters "OFF" shall appear in capital letters below the arrow.

(d) An offset markout shall consist of a pair of offset markout symbols, as described in (c) above. The base of each symbol shall be over the offset center line of the underground facility, but no more than 18 inches horizontally, plus the offset distance, from either wall of the underground facility. A minimum of three separate offset symbols shall be made for each underground facility.

(e) Illustrations of an offset centerline markout are set forth in Appendix A, figures 4 and 6.

(f) An offset markout for an underground facility of greater than 12 inches nominal outside dimension shall consist of a pair of parallel offset markout symbols as described in (c) above. The base of each symbol shall be over one offset outside wall of the underground facility, but no more than 18 inches horizontally, plus the offset distance,

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from either wall of the underground facility. A minimum of three separate offset paint markouts shall be made for each underground facility.

(g) Illustrations of an offset outside dimension markout are set forth in Appendix A, figures 5 and 6.

(h) The distance between an underground facility and an offset markout shall be as small as possible while enabling an excavator to clearly see the location of the underground facility. If site conditions permit this distance to be 18 inches or less, the operator shall not utilize a centerline offset markout, but instead shall utilize a centerline markout or outside dimension markout.

14:2-5.7 (Reserved)

14:2-5.8 (Reserved)

14:2-5.9 (Reserved)

14:2-5.10 (Reserved)

14:2-6.1 Violations in general

(a) This subchapter shall govern the Board's assessment of civil penalties for violations of this chapter and the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq., in accordance with N.J.S.A. 48:2-86 through 89.

(b) The Board may impose a civil penalty by means of a Notice of Probable Violation (NOPV) followed by a Final Order of Penalty Assessment (FOPA); through an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA); through a Superior Court Action; or as otherwise permissible by law.

(c) This subchapter shall also govern the procedures for issuing NOPVs and AONOCAPAs, requesting an informal conference and requesting an adjudicatory hearing on an AONOCAPA.

(d) If statutory amendments are enacted after October 15, 2007, which authorize additional or increased penalties or remedies for violation of this chapter, the Board shall have the authority to apply such penalties or remedies upon the effective date of the statutory amendment.

(e) Any civil penalty imposed pursuant to this section may be compromised by the Board. In determining the amount agreed upon in compromise, the Board shall consider the factors set forth at N.J.A.C. 14:2-6.2(c).

(f) Once a penalty becomes due and owing in accordance with this subchapter, the penalty may be deducted from any sums owing by the State to the person charged, or may be recovered, if necessary, in accordance with "the Penalty Enforcement Law of 1999" (N.J.S.A. 2A:58-10 et seq.).

(g) Pursuit of any remedy specified in this subchapter shall not preclude the pursuit of any other remedy, including any civil remedy for damage to an operator's underground facilities or for damage to a person's property, provided by any other law. Administrative and judicial remedies provided in this section may be pursued simultaneously.

14:2-6.2 Penalty amounts

(a) Except as provided pursuant to (b) below, an operator, an excavator, or the One-Call System operator, that violates any provision of this chapter, the Underground Facility Protection Act, or an order adopted pursuant thereto, shall be liable to a penalty of not less than \$ 1,000 and not more than \$ 2,500 per day for each day the

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violation continues , except that the maximum civil penalty shall not exceed \$ 25,000 for any related series of violations.

(b) Notwithstanding any provision of this chapter or of N.J.S.A. 48:2-88 to the contrary, a person who is determined by the Board, after notice and opportunity to be heard, to have violated any provision of this chapter, the Underground Facility Protection Act, or an order adopted pursuant thereto, with respect to a natural gas underground pipeline or distribution facility or a hazardous liquid underground pipeline or distribution facility, shall be liable to a civil penalty in the amount set forth in the Board's natural gas pipeline safety rules at N.J.A.C. 14:7-2.7.

(c) In determining the amount of the penalty assessed, or an amount agreed upon in compromise, the Board shall consider:

1. The nature, circumstances and gravity of the violation(s);
2. The degree of the violator's culpability;
3. Any history of prior violations;
4. The prospective effect of the penalty upon the ability of the violator to conduct business;
5. Any good faith effort by the violator to achieve compliance;
6. The violator's ability to pay the penalty; and
7. Any other factors justice may require.

(d) Neither the assessment of a penalty nor the payment of a penalty shall be deemed to affect the availability of any other enforcement provision provided for by law, in connection with the violation for which the assessment is levied or any other violation.

(e) All civil penalties recovered pursuant to this chapter shall be paid into the General Fund.

14:2-6.3 Notice failure, prima facie evidence of negligence

Evidence that an excavation or demolition that results in any damage to an underground facility was performed without providing the notice required pursuant to this chapter shall be prima facie evidence in any civil or administrative proceeding that the damage was caused by the negligence of the excavator or responsible contractor, as applicable, that performed the excavation or demolition.

14:2-6.4 Notices of probable violation

(a) Upon discovery of a probable violation, Board staff may issue a written Notice of Probable Violation (NOPV) to the alleged violator. The NOPV shall be served in accordance with the New Jersey Office of Administrative Law's procedural rules at N.J.A.C. 1:1-7.

(b) The Notice of Probable Violation shall:

1. State the facts, which constitute the probable violation;
2. Identify the provision of law, rule, regulation or order violated;

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3. Identify the maximum permissible penalty for the violation;

4. Include a form of Answering Certification, to be completed and submitted by the alleged violator;

5. Notify the alleged violator of both of the following:

i. Failure of the alleged violator to submit the Answering Certification within the deadline in N.J.A.C. 14:2-6.5(a) may result in Board findings as to the violation(s) in the NOPV through issuance of a Final Order of Penalty Assessment (FOPA), which may include the maximum penalty permissible by law, without further prior notice to the alleged violator; and

ii. The alleged violator may contest the NOPV in accordance with N.J.A.C. 14:2-6.5(b). If an alleged violator contests the NOPV, the Board may issue an Administrative Order and Notice of Civil Administrative Penalty Assessment in accordance with N.J.A.C. 14:2-6.7, in which case the alleged violator may request a hearing in accordance with N.J.A.C. 14:2-6.8.

(c) The Notice of Probable Violation may include an offer of settlement or compromise.

(d) The Board or its staff may withdraw a Notice of Probable Violation at any time.

14:2-6.5 Response by alleged violator to Notice of Probable Violation

(a) The alleged violator shall respond to the Notice of Probable Violation (NOPV) by submitting the completed Answering Certification to the Board's Division of Reliability and Security within 21 calendar days after receiving the Notice of Probable Violation and form of Answering Certification. The alleged violator shall submit the Answering Certification regardless of whether the alleged violator wishes to contest the NOPV.

(b) If the alleged violator wishes to contest the NOPV, the alleged violator shall indicate this on the Answering Certification and provide proofs by both picture and narrative of the alleged violator's innocence as to the violation charged. Board staff may hold an informal conference with the alleged violator to analyze the record of the matter.

(c) Following the alleged violator's submittal of the Answering Certification, the Notice of Probable Violation may be resolved informally; and/or the staff and the alleged violator may enter into a written settlement agreement, which shall be presented to the Board for approval.

(d) Nothing in this section or in N.J.A.C. 14:2-6.4 shall prevent the Board from issuing an Administrative Order and Notice of Civil Administrative Penalty Assessment pursuant to this subchapter at any time upon discovery of a probable violation, nor shall this section be deemed to affect the availability of any other enforcement provision provided for by law, in connection with the probable violation.

(e) If the NOPV is not resolved informally under this section, Board staff may present the matter to the Board for further action as determined by the Board, which may include, but shall not be limited to, the issuance of an AONOCAPA.

14:2-6.6 Failure of alleged violator to submit Answering Certification

(a) If the alleged violator fails to submit the Answering Certification within the deadline at N.J.A.C. 14:2-6.5(a), or fails to attend a hearing or conference as required under this subchapter, the alleged violator shall be deemed in default.

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(b) If an alleged violator is in default, Board staff may present the Notice of Probable Violation (NOPV) to the Board for findings and issuance of a Final Order of Penalty Assessment (FOPA), without further notice to the alleged violator. Board staff shall also present proof that the NOPV was served upon the violator in accordance with the Administrative Procedure Rules at N.J.A.C. 1:1-7.2.

(c) If the Board issues an FOPA, including one or more violations that were set forth in the NOPV, the Board may assess the maximum penalty authorized by law for these violations without further prior notice to the violator and without further opportunity for the violator to contest the penalty.

(d) In determining the appropriate amount of a civil administrative penalty after a default, the Board shall not be bound by any compromise or settlement offer made to the alleged violator by staff, and shall apply the standards in N.J.A.C. 14:2-6.2.

(e) Payment of a civil administrative penalty assessed under this section is due on the 10th day following service upon the alleged violator of the Board's FOPA or as otherwise specified by the Board.

14:2-6.7 Notice of Administrative Order and Civil Administrative Penalty Assessment (AONOCAPA)

(a) In addition to the Notice of Probable Violation, which can be issued by Board staff under N.J.A.C. 14:2-6.4, the Board may at any time issue an Administrative Order and Notice of Civil Administrative Penalty Assessment.

(b) The Board shall serve an AONOCAPA in accordance with the Administrative Procedure Rules at N.J.A.C. 1:1-7.2.

(c) The Board may, in its discretion, assess a civil penalty for more than one offense in a single Administrative Order and Notice of Civil Administrative Penalty Assessment or in multiple Administrative Orders and Notices of Civil Administrative Penalty Assessment.

(d) An Administrative Order and Notice of Civil Administrative Penalty Assessment shall:

1. Identify the provision of the law, rule, regulation or order alleged to have been violated;
2. Concisely state the facts, which constitute the alleged violation;
3. Order such alleged violation to cease;
4. Specify the amount of the civil administrative penalty to be imposed; and
5. Notify the alleged violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 14:2-6.8. If no hearing is requested, the penalty set forth in the AONOCAPA will be due and owing on the 21st day following service on the alleged violator, without further notice.

(e) If no hearing is requested on an AONOCAPA pursuant to N.J.A.C. 14:2-6.8, an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) shall become a Final Order, and the penalty in the AONOCAPA shall become due and owing, on the 21st day following service of the Administrative Order and Notice of Civil Administrative Penalty Assessment on the violator.

(f) If a hearing is requested but the Board denies the hearing request pursuant to N.J.A.C. 14:2-6.8, an Administrative Order and Notice of Civil Administrative Penalty Assessment shall become a Final Order, and the penalty in the AONOCAPA shall become due and owing, upon service on the violator of notice of the hearing request denial.

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(g) If an adjudicatory hearing is requested and conducted, an Administrative Order and Notice of Civil Administrative Penalty Assessment shall become a Final Order upon service on the violator of a Final Order in the contested case.

14:2-6.8 Adjudicatory hearings

(a) To request an adjudicatory hearing to contest an Administrative Order and Notice of Civil Administrative Penalty Assessment issued pursuant to this subchapter, the alleged violator shall submit the following information in writing to the Secretary of the Board, Attention: Adjudicatory Hearing Request/One-Call, Board of Public Utilities, 44 South Clinton Avenue, 9th Floor, PO Box 350, Trenton, New Jersey 08625-0350:

1. The name, address and telephone number of the alleged violator and its authorized representative;
2. The alleged violator's defenses, stated in short and plain terms, to each of the Board's preliminary findings of fact contained in the Administrative Order and Notice of Civil Administrative Penalty Assessment;
3. An admission or denial of each of the Board's preliminary findings of fact contained in the Administrative Order and Notice of Civil Administrative Penalty Assessment. If the alleged violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the alleged violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the alleged violator intends, in good faith, to deny only a part of or qualify a finding, the alleged violator shall specify so much of it as true and material and deny only the remainder. The alleged violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding denied, the alleged violator shall allege the fact or facts as the alleged violator believes it or them to be;
4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
5. An estimate of the time required for the hearing (in days and/or hours); and
6. A request, if necessary, for a barrier-free hearing location to accommodate physically disabled persons.

(b) If the Board does not receive the hearing request within 20 days after service on the violator of the Administrative Order and Notice of Civil Administrative Penalty Assessment being challenged, the Board shall deny the hearing request.

(c) If the alleged violator fails to include all the information required under (a) above or if upon review of the submission, the Board determines that there is no dispute of material facts, the Board may deny the hearing request.

(d) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

14:2-6.9 Actions in Superior Court

(a) The Board may institute an action or proceeding in the Superior Court for a violation of any provision of this chapter, the Underground Facility Protection Act, or an order adopted pursuant thereto and the court may proceed in a summary manner.

(b) The Board may bring a Superior Court action for one or more of the following remedies:

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1. A temporary or permanent injunction, pursuant to N.J.S.A. 48:2-86(b);
2. A civil penalty;
3. Costs incurred by the Board as a result of any investigation, inspection, monitoring or survey that led to the Board's determination that the violation had occurred; and/or
4. The reasonable costs of preparing, pursuing and litigating the case against the violator.

(c) An affected operator may institute an action in the Superior Court for an injunction against a violator whose repeated failure to comply with the Underground Facilities Protection Act constitutes a threat to public safety.

(d) The institution of an action or proceeding in Superior Court by any party shall not limit the Board's authority to seek the administrative remedies provided for in this subchapter.

14:2-6.10 Criminal prosecution

A person that knowingly engages in certain activities in violation of this chapter may be subject to criminal prosecution in accordance with N.J.S.A. 48:2-87.