

3.800 UNDERGROUND UTILITY DAMAGE PREVENTION

3.801 Definitions

For the purpose of interpreting Chapter 86 of Title 30, the following definitions shall apply:

- (A) "Underground utility easement" shall include:
 - (1) Rights of way, whether by deed, oral license, or otherwise, for transmission and distribution lines.
 - (2) Service drops which are owned by the utility.
- (B) "Public right of way" shall include streets, roads, sidewalks, and any other way created for use by the public, including ways under construction.
- (C) "Routine highway maintenance" shall include snow removal, patching, salting, grading, and other day to day operations, but not ditching, signpost setting, guardrail placement or removal, or culvert work. Operations which do not disturb the subsurface of the earth, or which involve only the replacement of a post in the same location, shall be deemed to be routine.
- (D) "Company" means any public utility company, as defined in 30 V.S.A. § 201(a), which supplies gas, electricity, or telephone service and which maintains underground facilities, and any cable television company operating a cable television system as defined in 30 V.S.A. § 501 and which maintains underground utility facilities.

3.802 Designation of Damage Prevention System

- (A) Dig Safe System, Inc., is hereby designated the damage prevention system for Vermont.
- (B) Each company shall become a member of Dig Safe System, Inc.
- (C) If a substantial number of companies wish to join or create a system other than Dig Safe System, Inc., they may petition the Commission for permission. Permission will not be unreasonably withheld; however, permission will be granted only if the benefits clearly outweigh the potential confusion of having a second system operating in the state.
- (D) If Dig Safe System, Inc., ceases or indicates that it will cease operation in Vermont, the Commission will open a proceeding to designate or create a new system.
- (E) No company shall be exempt from membership in the damage prevention system unless it can show that the cost of such membership outweighs the benefit, both to such company and to other affected persons. In ruling on a company's request for exemption, the Commission shall consider the following factors:
 - (1) The estimated cost to the company, both in absolute terms and as a percentage of the company's revenues, of joining the damage prevention system.
 - (2) The expected impact on rates of joining the damage prevention system.

- (3) A comparison of the expected frequency of damage to the company's underground plant, and likely consequences of such damage, under the company's proposed alternative and as a member of the system. Considerations shall include:
 - (a) the nature of the utility service provided;
 - (b) miles and percentage of plant underground;
 - (c) population density and expected frequency of excavation in areas where the company has underground plant.
- (4) The disadvantages of not having uniform statewide coverage for the damage prevention system.
- (5) Alternative types of membership which may be offered by the system.
- (6) Any other factors which the Commission finds relevant.

3.803 Notice of Excavation and Marking of Facilities

- (A) As required by 30 V.S.A. § 7004, no person shall engage in excavation activities without first giving at least forty eight hours (but no more than thirty days) notice to the underground facility damage prevention system designated in section 3.802 above.
- (B) As defined in 30 V.S.A. § 7001, "Excavation activities" means activities involving the removal of earth, rock or other materials in the ground, disturbing the subsurface of the earth, or the demolition of any structure, by the discharge of explosives or the use of powered or mechanized equipment, including but not limited to digging, trenching, blasting, boring, drilling, hammering, post driving, wrecking, razing, or tunneling, within an underground utility easement or the area of a public right-of-way in which an underground utility facility is located. Excavation activities shall not include the tilling of the soil for agricultural purposes or activities relating to routine public highway maintenance.
- (C) Within forty eight hours of the receipt of notice from the damage prevention system pursuant to 30 V.S.A. § 7005, each utility concerned shall determine whether it has facilities in place and, if so, shall mark or cause to be marked their approximate location, as required by law.
- (D) Such markings shall be with stakes or waterproof paint, using colors prescribed by the American Public Works Association or the American Society of Mechanical Engineers to identify the type of utility facility in place, or by other means acceptable to the company and the excavator.
- (E) For the purpose of computing time under this section and the preceding section concerning notice, Saturdays, Sundays, and legal Vermont and Federal holidays shall not be included.
- (F) As provided in 30 V.S.A. § 7006, in the case of extensive excavation activities where the facilities cannot reasonably be marked within 48 hours, the affected companies shall mark or cause to be marked within 48 hours the facilities where excavation will first occur and the remaining facilities in a timely manner thereafter. In addition, the excavator and the affected companies may by agreement alter the

timing of the notice or the marking, provided the marking is made prior to excavation activities.

3.804 Emergencies

- (A) In the event of a situation which poses a threat to life, health, property, continued utility service, or the operation of a major industrial plant or public facility, excavation may begin as soon as notice thereof is given to the damage prevention system. Such notice must be given by telephone. If the threat is of such an immediate nature that the delay caused by notifying the damage prevention system would itself increase the threat, excavation may begin at once. The excavator shall thereafter use due care to ensure that the underground plant of utilities in the area of said excavation is not damaged.
- (B) A utility may agree with an excavator, in advance, on conditions in which notice is waived or upon provisions for notice not consistent with this rule.

3.805 Investigation of Complaints

- (A) Companies shall institute procedures to receive and resolve complaints of excavators or the general public, and to take action against excavators for failure to comply with the requirements under this Rule or Chapter 86 of Title 30.
- (B) The Commission shall hear unresolved complaints arising under this Rule or Chapter 86 of Title 30; procedure in such disputes shall be as provided by statute and by the Commission's rules of practice. This provision is in addition to any other remedies parties may have at law.
- (C) Upon discovery of damage to underground facilities by excavation activities or other action that may constitute a probable violation of 30 V.S.A. §§ 7004, 7006a, 7006b, or 7007, a company shall forward an Underground Facility Damage Prevention Report to the Commission and to the Department on the form prescribed by the Commission. In addition, reports of damages shall be forwarded by each company to the Commission and the Department of Public Service along with the annual report required under 30 V.S.A. § 22.
- (D) Following receipt of an Underground Facility Damage Prevention Report or annual report, the Commission may request the Department of Public Service to investigate the facts and make a report.
- (E) The reporting and investigation provisions in this section are in addition to those of 30 V.S.A. § 207 and VPUC Rule 3.807.

3.806 Standards for New Underground Facilities

After the effective date of this rule:

- (A) All underground utility facilities shall be built in accordance with industry practices and any applicable federal requirements; in addition, such construction shall at least conform to the following standards:
 - (1) For gas, the federal safety standards defined in 49 C.F.R. Parts 191-192.
 - (2) For electricity, the National Electric Safety Code.

- (3) For telephone and cable television, the National Electric Safety Code as applicable, and BSP 629-200-206 as applicable.
- (B) Any above-ground markings and location indicators shall conform to industry practices and to the color scheme designated by the American Public Works Association or the American Society of Mechanical Engineers.
- (C) Nothing in this rule shall be construed to require construction techniques or materials inconsistent with the requirements of any federal law or regulation.
- (D) Codes, statutes, or regulations referred to above shall be as in effect at the time of construction.
- (E) In the case of electric or gas facilities, a subsurface marker shall be placed above the entire length of each line or conduit to alert an excavator of the presence of such facility. If the line or conduit is not metallic or otherwise detectable from the surface using a locating device, the subsurface marker shall be of a material so detectable.
- (F) Within a reasonable time after installation of a line or conduit is completed, the company shall, upon request of an entity listed in paragraph (1) or (2) of this subsection, submit a drawing indicating the areas where underground facilities have been placed. Such drawing need not specify the location of facilities with the precision required by section 3.803, but it shall be sufficient to alert the viewer to the need for care.
 - (1) If the facilities are within the right of way of a state highway, upon request the drawing shall be sent to the Transportation District Office for the district where such facilities are located.
 - (2) For any facilities, such drawing shall be filed with the legislative body of the municipality where they are located upon request of the municipality.

3.807 Enforcement

- (A) The Department may investigate any Underground Facility Damage Prevention Report. If after investigation the Department finds a probable violation of 30 V.S.A. §§ 7004, 7006a, 7006b, or 7007, VPUC Rule 3.803, or an order or orders issued thereunder, the Department may in its discretion issue a "Notice of Probable Violation" ("Notice") to the person alleged to have violated these sections with copies to the Commission and the company that submitted the Underground Facility Damage Prevention Report. A copy of said Notice shall be filed with the Commission and shall be treated as a petition to impose penalties under 30 V.S.A. § 7008.
- (B) A Notice of Probable Violation shall include:
 - (1) Statement of the statute, rule, regulation, or order issued thereunder which the person is alleged to have violated;
 - (2) A brief statement of the evidence upon which the allegation(s) is based;
 - (3) Notice of response options available (See Section (E) of this Rule);
 - (4) Statement of remedial action sought;
 - (5) If a civil penalty is proposed, the amount of the proposed civil penalty (See 30

V.S.A. § 7008).

- (C) Within 30 days of receipt of a Notice of Probable Violation, any person who is the subject of an enforcement proceeding pursuant to that Notice shall make a written response to the Department and to the Commission, with a copy to the Company that reported the alleged violation.
- (D) The Department may amend a Notice of Probable Violation at any time prior to issuance of a final Commission order. If an amendment includes any new material allegations of fact or proposes new or additional remedial action or an increased civil penalty, any person who is the subject of an enforcement proceeding pursuant to that amended Notice is directed shall have an additional 15 days from the time the amended Notice is received to respond.
- (E) Where the Notice of Probable Violation contains a statement of remedial action sought or proposes the imposition of a civil penalty, any person who is the subject of enforcement proceedings pursuant to that Notice may:
 - (1) Agree to take the remedial action sought and submit a plan for compliance which shall include a schedule of steps to be taken and a date by which complete compliance shall be obtained;
 - (2) Pay the proposed civil penalty by certified check; and/or
 - (3) Object to imposition of the remedial action and the imposition of the penalty and request a hearing before the Commission.
- (F) A request for hearing under Section 3.807(E)(3) of this rule in response to a Notice of Probable Violation issued pursuant to this rule must include a statement of the issues intended to be raised at hearing. In the statement of issues, the person requesting the hearing shall assert any defenses he or she intends to raise and, if the person intends to claim that mitigating factors are present, shall include an explanation of those factors, accompanied by supporting data or other information. The request may also include any offer made in compromise of the proposed civil penalty or remedial action.
- (G) If the alleged violator agrees to the remedial action sought by the Department and agrees to pay the proposed civil penalty, pursuant to Section 3.808(E)(1) and (2) of this section, the alleged violator will be deemed to have waived notice and an opportunity for hearing provided the Commission's final Order is consistent with the remedial action and penalty agreed to by the Department and the alleged violator.
- (H) After notice and an opportunity for hearing, the Commission shall enter its final Order in the matter. The final Order may include:
 - (1) A statement of actions, if any, required to be taken and the date by which such actions must be taken; and
 - (2) The amount of any civil penalty imposed.
- (I) In addition to the procedures set forth in this section, the Commission, on its own initiative or in response to a petition, may initiate an investigation into a possible violation of any statute, rule, regulation, or order issued thereunder related to

Underground Utility Damage Prevention.

- (J) Any person found to be in violation of any statute, rule, regulation, or order issued thereunder related to Underground Utility Damage Prevention may be subject to a civil penalty in accordance with 30 V.S.A. §§ 30 and 7008. In imposing a civil penalty on any person, the Commission shall consider the gravity of the violation, the culpability of the person responsible for the violation, any history of prior violations, the good faith of the person in attempting to achieve compliance, the size of the business of the person being charged, the likely deterrent effect of the penalty, and any other relevant or mitigating factors.