Protection of Underground Facilities

Public Service Law
Section 119-b
June 25, 1996

General Business Law
Article 36, Section 765
May 9, 2025

16 NYCRR Part 753
February 21, 2023

State of New York
Department of Public Service

Call the One-Call Center

See back cover for appropriate 1-800 number. Call 2 to 10 days in advance of start date, not counting date of call. Make note of ticket reference number and names of operators notice will be transmitted to.

Wait the Required Time

Do not start before your stated commencement date, unless you have been notified by EVERY operator that they have NO FACILITIES in your work area.

Confirm Utility Response

Check that each notified operator has either marked your work site or given an "all clear".

Respect the Markings

Preserve the paint/flags until no longer needed for safe excavation. It is recommended that you remove them to the best of your ability once your excavation work is complete.

Dig with Care

See "Verifying Locations/Tolerance Zone" below. Maintain minimum 4" clearance from utilities after verifying locations. Support long spans of exposed facilities to prevent collapse or sagging. Backfill carefully to prevent damage to facilities and their coatings, and to provide support beneath exposed facilities.

Verify locations/Tolerance Zone (See 753-1.2 (k) & (i), 753-3.6 and 753-3.7)

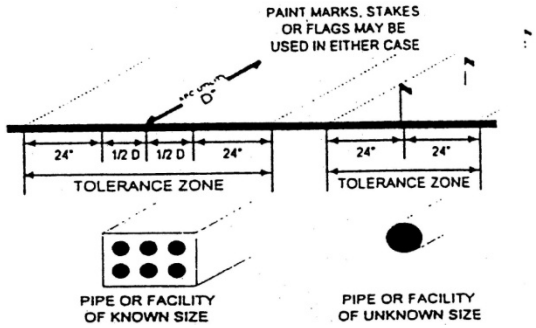
Before using powered equipment within the tolerance zone, the locations of gas and liquid petroleum lines MUST be verified by means of hand-dug test holes. Locations of other utilities may be verified in this manner, or by other means mutually agreed to with the operator. Powered equipment may be used for removal of pavement, ONLY to the depth of pavement. If the facility cannot be located after diligent search at a reasonable depth, notify the operator.

Pre-marking with White Paint

(See 753-3.2(b))

The use of White Paint to delineate a work area is encouraged. It is required when necessary to adequately identify the work site (i.e. the exact location, dimensions, etc. cannot be verbalized). This practice helps locators avoid marking where not necessary while assuring the excavation site does get marked properly. White is the industry standard for this purpose and is used to avoid confusion with other underground facility designations. Chalk based paint is advised since it will dissipate quicker with rain, etc. Take care that the white marks will not be confused with traffic or pedestrian control marks. For a small or single (ex: tree planting) excavation of known dimensions, delineate the exact area with dots, dashes, a continuous line, or white stake(s). For larger excavations, use intervals whereby each mark can be seen from the previous one.

As a courtesy and where practical, alerting the property owner to the reason for the white marks can save calls to the utilities and One-Call Center asking: "who put this paint here and why?"



16 NYCRR PART 753 - PROTECTION OF UNDERGROUND FACILITIES

Statutory Authority
Public Service Law §119-b and
General Business Law Article 36

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SUBPART 753-1
GENERAL REQUIREMENTS

753-1.1 Purpose. The purpose of these rules is to establish procedures for the protection of underground facilities in order to assure public safety and to prevent damage to public and private property, as required by General Business Law Article 36 and Public Service Law Section 119-b. This Part may be cited as Industrial Code 53 or Code Rule 53, in addition to its designation as Part 753.

753-1.2 Definitions. When used in this Part, unless the context otherwise requires, the following terms shall have the following meanings.

(a) **Automated Positive Response (APR) system**: a system established by the one-call notification system to furnish a single point of contact between member operators and excavators for the purpose of communicating the status of an excavation location request as provided by the member operators.

(b) **Commission**: The Public Service Commission

(c) **Contact**: Any defacing, scraping, impact upon an underground facility or its protective coating, housing or other protective device.

(d) **Damage:** Any destruction or severance of any underground facility or its protective coating, housing or other protective device or any displacement of or removal of support from any underground facility which would necessitate repair of such facility.

(e) **Department**: The Department of Public Service.

(f) **Demolition:** The total or partial wrecking, razing, rending, moving or removal of any structure.

(g) **Enforcement proceeding:** A proceeding by the Commission to determine a penalty under

the authority of §119-(b)(8) of the Public Service Law.

(h) **Emergency:** Any abnormal condition which presents an immediate danger to life or property including the discontinuance of a vital utility service necessary for the maintenance of public health, safety and welfare.

(i) **Excavation:** Any operation for the purpose of movement or removal of earth, rock, pavement or other materials in or on the ground by use of mechanized equipment or by blasting, including but not limited to, digging, auguring, backfilling, boring, drilling, grading, plowing in, pulling in, fence post or pile driving, tree root removal, saw cutting, jack hammering, trenching and tunneling; provided, however, that the following shall not be deemed excavation:

(1) movement of earth by tools manipulated only by human or animal power;

(2) the tilling of soil for agricultural purposes;

(3) vacuum excavation; and

(4) saw cutting and jack hammering in connection with pavement restoration of a previous excavation where only the pavement is involved.

(j) **Excavator:** Any person who is engaged in a trade or business which includes the carrying out of excavation or demolition; provided, however, that an individual employed by an excavator and having no supervisory authority other than the routine direction of employees over an excavation or demolition, shall not be deemed an excavator for the purpose of this Part. The act of any employee or agent of any excavator acting within the scope of his or her official duties or employment shall be deemed to be the act of such excavator.

(k) **Field Citation:** A written statement issued pursuant to subdivision 753-6.2 of this Part by an employee of the Department informing a Respondent that, in the judgment of the employee, a violation has occurred and setting forth the specific provisions allegedly violated by Respondent.

(l) **Hand dug test holes:** Excavations performed for designating, testing or verification purposes which are dug by the use of hand-held tools utilizing only human power. The use of vacuum excavation techniques are acceptable means of exposing underground facilities.

(m) **Local government:** A County, town, village or city.

(n) **Near:** An area within 15 feet of the outside perimeter or diameter of an underground facility or its encasement.

(o) **Notice of probable violation (NOPV):** A written statement or letter from the Department, containing the items specified by subdivision 753-6.4(b) of this Part, to a Respondent informing him or her that an enforcement proceeding is being initiated.

(p) **One-call notification system:** Any organization among whose purposes is establishing and carrying out procedures to protect underground facilities from damage due to excavation and demolition, including but not limited to, receiving notices of intent to perform excavation and demolition and transmitting the notices to one or more member operators of underground facilities in the specified area.

(q) **Operator:** Any person who operates an underground facility to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or telegraph communications, cable television, sewage removal, traffic control systems, or water.

(r) **Person:** Any individual, firm, corporation, association or partnership, cooperative association, joint venture, joint stock association, business trust, their lessees, trustees or receivers, municipality, governmental unit or public authority whether or not incorporated.

(s) **Powered equipment:** Any equipment energized by an engine or motor and used in excavation or demolition work.

(t) **Respondent:** A person who the Department has served a field citation, warning letter or Notice of Probable Violation.

(u) **Tolerance zone:** If the diameter of the underground facility is known, the distance of one-half of the known diameter plus two feet, on either side of the designated center line or, if the diameter of the underground facility is not known, two feet on either side of the designated center line.

(v) **Underground facility:** A facility and its attachments located underground and installed by an operator to furnish its services or materials, including but not limited to, pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels and any encasement containing such facilities. Such term shall not include oil and gas production and gathering pipeline systems used primarily to collect oil or gas production from wells.

(w) **Warning Letter:** A written letter from the Department to a Respondent, pursuant to subdivision 753-6.3 of this Part, informing a Respondent that an alleged violation of a specific provision(s) of Part 753 has occurred or is continuing, advising the Respondent to correct it, if it is correctable, and to comply henceforth or be subject to enforcement proceedings under this Part.

(x) **Work area:** The area of the ground or equivalent surface which will be disturbed or removed by excavation work or affected by demolition work.

(y) **Working days:** Mondays through Fridays, exclusive of public holidays. The public holidays observed by the State of New York are as follows:

New Years Day	January 1
Martin Luther King Day	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19
Independence Day	July 4
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
Veteran's Day	November 11
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25

If the holiday occurs on a Saturday, it will be observed the Friday before. If the holiday occurs on a Sunday, it will be observed the Monday after.

SUBPART 753-2
DUTIES OF LOCAL GOVERNMENT

753-2.1 Provision and Display of Notice. Any local government that issues permits for excavation and demolition shall provide a notice to applicants for permits that informs them about their responsibilities under state law to protect underground facilities and the existence, operation, programs and telephone number of the one-call notification system. Every such local government shall continuously display such notice in a conspicuous location in the office or agency it designates.

SUBPART 753-3
DUTIES OF EXCAVATORS

753-3.1 Timing of notice for excavation or demolition.

(a)(1) Before commencing or engaging in any non-emergency excavation or demolition, each excavator shall provide notice of the location and date of the planned excavation or demolition to the one-call notification system serving the vicinity in which the excavation or demolition is to take place.

(2) Such notice shall be served at least two but not more than ten working days, not including the date of the call, before the commencement date of the excavation or demolition.

(b) Excavation or demolition which is required to be performed promptly as a result of an emergency, disaster or to correct an immediate hazard may proceed immediately without prior notification to operators, if the situation is so serious that the excavation or demolition cannot reasonably be delayed. However, excavators shall notify the one-call notification system as soon as possible that such excavation or demolition is commencing or is underway. Extreme caution shall be employed by the excavator to prevent damage to existing underground facilities and to avoid endangering persons and property.

(c) At least seven working days in advance of the commencement date of a demolition, the excavator shall request a pre-demolition conference, through the one-call notification system, with all member operators who have underground facilities at or near the demolition area. A pre-demolition conference may encompass one or more demolition(s) in the project area. A request for a pre-demolition conference is not a substitute for the notice of intent to perform demolition work required by Section 753-3.1 of this Part.

(d) Whenever an excavator cancels an excavation or demolition, he or she shall promptly communicate the cancellation to facility operators utilizing the one-call notification system.

(1) Whenever an excavator postpones the commencement date for ten or less working days, no call to the one-call notification system or operators is required.

(2) Whenever an excavator postpones an excavation or demolition more than ten working days, the same requirements for notice shall pertain to the revised commencement date as listed in subdivisions 753-3.1(a).

(e)Information requested from an operator for design purposes shall not be a substitute for the notice of intent to perform excavation or demolition as required by this Subpart.

753-3.2 Detailed notice requirements.

(a) Every notice provided by an excavator to the one-call notification system concerning planned excavation or demolition shall contain at least the following information:

(1) Name of the person serving such notice;

(2) Name, address and telephone number of the excavator or excavator's company;

(3) Excavator's field telephone number, if one is available;

(4) Name of the field contact person, if any;

(5) Address and exact location as well as the approximate extent and dimensions of the planned work area;

(6) Means of excavation or demolition and whether or not explosives are to be used;

(7) Brief description of the planned excavation or demolition;

(8) Date and time the excavation or demolition is planned to commence.

(b) When necessary for adequate identification, or as determined by mutual agreement of the operator and excavator, the excavator shall delineate the work area with white paint, white stakes or other white suitable markings.

753-3.3 Commencement of excavation or demolition.

(a) The excavator may proceed with excavation or demolition on the stated date of commencement if, prior thereto, he or she has received notification from each and every operator notified by the one-call notification system that:

(1) Such operator has no underground facility located in or within 15 feet of the work area; or

(2) That any underground facility located in or within 15 feet of the work area has been staked, marked or otherwise designated in accordance with the provisions of Subpart 753-4 of this Part.

(b) The excavator shall not commence the excavation or demolition on the stated commencement date if he or she has been notified by an operator that the staking, marking or other designations of an underground facility located in or within 15 feet of the proposed work area will not be completed on the stated commencement date. In such case, the operator is required promptly to report such fact to the excavator and to inform the excavator of a prompt and practicable completion date, which in no case shall be more than two working days after the excavator's stated commencement date, unless a longer period is agreed to by both parties.

(c) The excavator may proceed with excavation or demolition prior to the stated date of commencement once he or she has received notification from each and every operator notified by the one-call notification system that each operator has no underground facilities located in or within 15 feet of the work area.

(d) Where available through the one-call notification system, the excavator shall utilize the Automated Positive Response (APR) system in order to obtain the response(s) of the operators that were notified by the one-call notification system.

753-3.4 Staking, marking or other designation.

(a) Every excavator shall be familiar with the provisions of this Part, especially those relating to size and depth indications, color coding, center line or offset staking or marking and the location of underground facilities by designations other than staking or marking.

(b) Whenever the excavator determines that a review of the staking, marking or other designation is necessary or that additional information is required, he or she shall so notify the operator or the one-call notification system.

753-3.5 Preservation of stakes, markings or other designations. Starting on the stated commencement date given in the excavator's notice to the one-call notification system, the excavator shall be responsible for protecting and preserving the staking, marking or other designation until no longer required for proper and safe excavation or demolition work at or near the underground facility.

753-3.6 Verification of underground facilities.

Where an underground facility has been staked, marked or otherwise designated by the operator and the tolerance zone overlaps with any part of the work area, or the projected line of a bore/directional drill intersects the tolerance zone, the excavator shall verify the precise location, type, size, direction of run and depth of such underground facility or its encasement. Verification shall be completed before the

excavation or demolition is commenced or shall be performed as the work progresses.

(a) Powered or mechanized equipment may be used within the tolerance zone for removal of pavement or masonry but only to the depth of such pavement or masonry.

(1) Below the depth of pavement or masonry, powered equipment may be used in the tolerance zone prior to the verification of the location of facilities when agreed to in writing by the affected operator(s).

(2) Operators, or their agents and contractors working under their direction, may use powered equipment to locate their own facilities within the tolerance zone.

(b) The verification of underground facilities furnishing gas or liquid petroleum products shall be accomplished by the excavator by exposing the underground facility or its encasement to view by means of hand dug test holes at one or more points where the work area and tolerance zone overlap, or more points as designated by the operators of such facilities.

(c) The verification of underground facilities other than those furnishing gas or liquid petroleum products shall be performed at one or more points for each such underground facility as may be required by the operator. Verification shall be accomplished by exposing the underground facility or its encasement to view by hand dug test holes or by other means mutually agreed to by the excavator and operator.

753-3.7 Unverifiable underground facilities. If the precise location of an underground facility cannot be verified by the excavator after diligent search at a reasonable depth within the tolerance zone as staked, marked or otherwise designated by the operator, the excavator shall so notify such operator as soon as possible. The operator shall respond in accordance with subdivision 753-4.10 of this Part.

753-3.8 Powered excavating equipment limitations. After verifying the location of an underground facility, the excavator shall not employ powered or mechanical excavating equipment closer than four inches in any direction from the staked, marked or otherwise designated or known outside diameter or perimeter of such facility or its protective coating unless agreed to in writing by the operator of the affected underground facility. Any such written agreement shall be furnished to the excavator by the operator, upon request.

753-3.9 Discovery of unknown underground facilities. Where an undesignated or otherwise unknown underground facility is discovered within a work area, the excavator shall report such discovery as follows:

(a) If the identity of the operator of the discovered underground facility is known or is obvious, the excavator shall report the discovery to such operator. The operator shall respond immediately and, in accordance with subdivision 753-4.9(d) of this Part, take any necessary action and advise the excavator as to whether he or she may proceed in the immediate area.

(b)(1) If the identity of the operator of the discovered underground facility is not known or obvious, the excavator shall report the discovery to the one-call notification system and each operator notified by the one-call notification system shall respond immediately and, in accordance with subdivision 753-4.9 of this Part, determine whether or not such discovered facility is his or hers.

(2) While awaiting a determination of ownership, the excavator may proceed with the excavation or demolition taking reasonable care to protect and prevent damage to such underground facility.

753-3.10 Requirements concerning contact and damage to underground facilities.

(a) Excavators shall take all reasonable precautions to prevent contact or damage to underground facilities and their protective coatings, including but not limited to, compliance with any reasonable directions or accepted engineering practices given by affected underground facility operators.

(b) In the event of contact with or damage to an underground facility, the excavator shall immediately notify the operator of the facility.

(c) All excavation or demolition in the immediate vicinity of the contacted or damaged portion of the underground facility shall be suspended until such portion is repaired and the operator advises the excavator that excavation or demolition may proceed.

(d) No backfilling shall be done by the excavator in the vicinity of the contact or damage until the operator conducts an inspection and makes any necessary repairs; and, the excavator shall undertake no repairs unless and until authorized by the operator.

753-3.11 Requirements concerning underground facilities in danger of failing.

(a) An excavator who by removing the surrounding materials exposes an underground facility which in his or her judgment appears to have failed or to be in potential danger of failing from corrosion or other causes shall immediately report such condition to the operator of such underground facility.

(b) The excavator shall delay any further work in the immediate vicinity of such underground facility which could jeopardize it but may proceed in areas not affecting the questionable facility.

(c) The excavator may proceed in such immediate vicinity after the operator responds and takes necessary action in regard thereto and advises the excavator that he or she may proceed.

753-3.12 Required support and protection for underground facilities.

(a) An excavator shall provide prompt and adequate support and protection for every underground facility located in the work area as is reasonably specified by the operator of any such facility.

(b) In the absence of any specifications by the operator, the excavator shall provide support and protection in accordance with generally accepted engineering practice, including but not limited to shoring and bracing.

(c) Support shall be at least equivalent to the previously existing support and shall protect the underground facility against freezing and against traffic and other loads.

(d) Support shall be maintained during excavation, during backfilling and, if necessary, after backfilling is completed.

(e) The operator may, in agreement with the excavator, provide such support.

753-3.13 Backfilling requirements.

(a) An excavator performing excavation or demolition at an underground facility shall backfill such excavation with materials and in such manner as specified by the operator or, in the absence of such specifications, with suitable materials and in such manner as will avoid damage to, and provide proper support for, such underground facility and its protective coating both during and after backfilling operations.

(b) The excavator shall not place large rock, frozen earth, rubble, debris or other heavy or sharp materials or objects which could cause damage to or scraping against any underground facility.

(c) The backfill beneath and around any underground facility shall be properly compacted in accordance with generally accepted engineering practice.

(d) Heavy loads and excessive forces shall not be imposed on any exposed underground facility at any time during backfilling operations.

753-3.14 Emergency requirements. In the event of an emergency involving danger to life, health or property as a result of damage to an underground facility containing gas or liquid petroleum products or as a result of an electrical short; or a damage to an underground facility that results in the escape or release of natural or other gas, hazardous fluids, or any other flammable gas or fluid; the excavator shall:

(a) Proceed to evacuate his or her employees and all other endangered persons from the immediate vicinity to the best of his or her ability;

(b) Immediately notify 911 and the operator of the affected facility of the exact location, nature of the emergency and of the underground facility which is affected.

753-3.15 Responsibility to employees. Every excavator subject to the provisions of this Part shall make certain that all of his or her employees directly involved in excavation or demolition are thoroughly familiar with the applicable provisions of this Part and especially the provisions of this Subpart relating to their safety

SUBPART 753-4
DUTIES OF OPERATORS

753-4.1 Participation of operators

(a) Every operator of an underground facility shall participate in a one-call notification system within whose geographical jurisdiction or boundaries such underground facility is located.

(b) Every operator who is not a member of the one-call notification system and installs, has installed for him or her, or otherwise acquires, an underground facility, shall participate in a one-call notification system within 10 days after commencement of the installation or after the acquisition.

753-4.2 Removal of underground facilities. Any operator who removes or transfers ownership of all of his or her underground facilities from within the boundaries of any one-call notification system shall promptly notify the system.

753-4.3 Operator furnished information.

(a) Every operator shall provide the one-call notification system at least the following information:

(1) Corporate or other name and address of such operator;

(2) Department, agency, office or individual designated by the operator to be notified by the one-call notification system or excavators and the local address and telephone number of such department, agency, office or individual.

(b) Whenever such information is revised, changed or found to be incomplete or incorrect, the operator shall provide corrected information to each one-call notification system in which he or she participates.

753-4.4 Receiving notices. Each operator shall establish a means of receiving notices of planned excavation or demolition from the one-call notification system in accordance with the procedures of the system.

753-4.5 Operator's response to notice.

(a) Prior to the stated commencement date of the excavation or demolition work as stated in the recorded notice, the operator shall make a reasonable attempt to inform the excavator, by means of an Automated Positive Response (APR) system, where available, or by means of direct communications with the excavator, where APR is not available, that either:

(1) The operator has no underground facility in or within 15 feet of the work area; or

(2) Every underground facility belonging to him or her which is located in or within 15 feet of the work area has been staked, marked or otherwise designated in accordance with the provisions of this Subpart.

(b) Where an operator cannot complete the staking, marking or other designation of an underground facility prior to the stated commencement date and time of the excavation or demolition, the operator shall promptly report such fact to the excavator and shall inform the excavator of a prompt and practicable completion date which in no case shall be more than two working days after the excavator's stated commencement date, unless a longer period is agreed to by both parties.

(c) Whenever an excavator requests a review of any staking, marking or other designation, the operator shall comply with such request as soon as possible.

753-4.6 Locating underground facilities.

(a) Whenever an operator's underground facilities are in or within 15 feet of a work area, such facility shall be located, accurately and with due care, by means of staking, marking or other designation in accordance with the provisions of this Subpart.

(b) The following staking and marking requirements shall apply:

(1) Stakes or surface markings shall be provided preferably at the center line of the underground facility and at such sufficient intervals as is necessary to indicate clearly the location and direction of run of such underground facility.

(2) All stakes and surface markings shall be color coded in accordance with the provisions of this Subpart in order to identify the type of underground facility so staked or marked.

(3) Stakes and surface markings shall indicate in inches the size or diameter of the underground facility or its encasement, if known.

(4) Each stake and surface marking shall indicate in inches the depth of the underground facility at that point, if known.

(5) Surface markings shall consist of paint, dye or equivalent material which is color coded in accordance with the provisions of this Subpart and which contrasts with the ground or equivalent surface.

(6) Where conditions exist so as to render center line staking or marking impractical or confusing, the operator may indicate the location of an underground facility by means of offset staking or remote tie-in markings which will clearly indicate the location and direction of run of the facility.

(c) If staking or marking are not used to indicate the location of an underground facility, the operator shall designate such location in accordance with the following:

(1) By exposing the underground facility or its encasement to view within the work area in a manner sufficient to allow the excavator to verify the type, size, direction of run and depth of the facility;

(2) By providing field representation and instruction to the excavator in the work area; or

(3) By any other means as mutually agreed to by the operator and excavator, including but not limited to written descriptions, photographs or verbal instructions. Such agreement shall be provided in writing to the excavator upon his or her request

(d) An operator, or its agents or contractors, performing excavation or demolition work at or near his or her own underground facility shall not be required to stake, mark or otherwise designate such underground facility.

753-4.7 Uniform color code. The following uniform color code shall be utilized for staking and marking used to designate the location of underground facilities and excavation sites:

(a) Yellow - Gas, oil, petroleum products, steam, compressed air, compressed gases and all other hazardous liquid or gaseous materials except water.

(b) Red - Electric power lines or conduits.

(c) Orange - Communication lines or cables, including but not limited to telephone, telegraph, fire signals, cable television, civil defense, data systems, electronic controls and other instrumentation.

(d) Blue - Water.

(e) Green - Storm and sanitary sewers including force mains and other non-hazardous materials.

(f) Purple - Radioactive materials, reclaimed water, irrigation and slurry line.

(g) White - Excavation site.

(h) Pink - Survey markings.

753-4.8 Uniform identification letters. All staking and marking utilized for the location of underground facilities shall contain letter designations which will clearly identify the type of underground facility so staked or marked. Such letters shall comply with the following code:

(a) C - Communication facilities (other than telephone service).

(b) CH - Chemicals.

(c) CTV - Cable television.

(d) E - Electrical power.

(e) FS - Fire signals.

(f) G - Gas.

(g) HPW - High-pressure water (100 psig or more).

(h) P - Petroleum.

(I) PP - Petroleum products (naphtha, gasoline, kerosine and similar products).

(j) S - Sewer.

(k) ST - Steam.

(l) T - Telephone company services.

(m) TC - Traffic control signals.

(n) W - Water.

(o) O - All other facilities.

753-4.9 Operator's response to notices of contact or damage, facilities in danger of failing and discovery of unknown underground facilities.

(a) Upon receipt of a notice from an excavator or a one-call notification system reporting contact or damage to an underground facility, the operator shall immediately inspect such facility and make the necessary repairs or shall advise the excavator that the excavation work may proceed.

(b) Such repairs may be performed by the operator or by others authorized by him or her, including the excavator.

(c) Upon receipt of a notice from an excavator or a one-call notification system of the discovery of an underground facility in danger of failing, the operator shall respond immediately and take any necessary action in regard thereto, and advise the excavator as to whether he or she may proceed in the immediate area.

(d) When an operator has been notified by an excavator or a one-call notification system that an unknown underground facility has been discovered in the course of the excavator's work, such operator shall immediately determine whether or not such discovered facility is his or hers by means of records, on-site inspection or otherwise, and as soon as practicable either:

(1) Advise the excavator that the unknown facility is not his or hers; or

(2) If such facility does belong to him or her, advise the excavator on how to proceed and of any special requirements the operator deems necessary.

753-4.10 Unverifiable underground facilities. If an excavator notifies an operator that, after diligent search at a reasonable depth within the tolerance zone as staked, marked or otherwise designated by the operator, that he or she cannot verify the location of an underground facility, the operator shall verify such location as soon as possible or shall provide the excavator with prompt field assistance or use other means mutually agreed to by the excavator and operator. Such agreement shall be provided to the excavator upon his or her request.

753-4.11 Emergency service requirements.

(a) Each operator of an underground facility containing gas or liquid petroleum products shall provide means for accepting emergency calls and prompt field assistance to such calls on a 24 hour-per-day basis.

753-4.12 Requirements concerning demolition. In addition to responding in accordance with subdivision 753-4.6(a), the operator shall attend a pre-demolition conference with the excavator upon the excavators request.

753-4.13 Support and backfilling requirements. Where an underground facility will be disturbed or uncovered by excavation or demolition, the operator of such facility shall indicate to the excavator any preferred means of support or protection required for such facility and any special backfilling requirements or provide any other guidance for protection of an underground facility. Such information shall be furnished to the excavator before the stated date of commencement of the work, if practical.

753-4.14 Information for design purposes. Each operator shall provide a means by which information regarding the location of underground facilities can be obtained for design purposes. Such means may include, but are not limited to, provision of maps, meetings, or marking in accordance with Section 753-4.6 and shall be performed within mutually agreed to time frames.

753-4.15 Consumer Education program: Each operator of an underground gas pipeline or hazardous liquid petroleum facility shall on its own initiative or through a one-call notification system conduct a program to educate the public on the possible hazards associated with damage to facilities and on the importance of reporting gas odors and leaks. The one-call notification system may develop materials suitable for use in such programs.

SUBPART 753-5
ONE-CALL NOTIFICATION SYSTEMS

753-5.1 Qualifications.

(a) The total extent of one-call notification systems shall be such in numbers and locations as to provide protection of underground facilities throughout all areas of the state with no geographic overlap of areas served.

(b) Every one-call notification system shall be governed by a not-for-profit corporation in accordance with the minimum requirements contained in the law and in this Part.

753-5.2 Notice procedures. Every one-call notification system shall:

(a) Establish an effective notification service for receipt of notices from excavators, including a toll-free telephone number, and for transmission of such notices to every member operator who has underground facilities in or within 15 feet of the work area. Such notices may include

(1) notice of a planned excavation or demolition;

(2) a request for a pre-construction or pre-demolition conference relating to excavation or demolition work at or near underground facilities; or

(3) a notice of the discovery of an unknown underground facility.

(b) Provide a direct means of communication between the one-call notification system and each operator who is a member of the system.

(c) Use a standardized format to record all incoming notices or requests from excavators, including at least the following information:

(1) Date and time of receipt of a notice or request;

(2) Name of the person serving such notice or making such request;

(3) Name, address and telephone number of the excavator or excavator's company;

(4) Excavator's field telephone number, if one is available;

(5) Name of the excavator's field contact person, if any;

(6) Address and exact location as well as the approximate extent and dimensions of the work area;

(7) Means of excavation or demolition and plans for use of explosives;

(8) Brief description of the planned excavation or demolition;

(9) Date and time the work is to commence;

(10) Name of the person receiving such notice;

(11) Name of the notification system.

(d) Assign a unique serial number to each incoming notice from excavators and provide the number to the excavator.

(e) Give persons providing notice of an intent to engage in an excavation or demolition activity the names of member operators of underground facilities to whom the notice will be transmitted.

(f) Furnish a copy of such notice record to the excavator, upon his or her request. The mailing of such copies of the notice record shall be construed to be in compliance with this Part.

(g) Keep on file a copy of each such notice record for a period of at least four years from the date of such notice.

753-5.3 System duties. Each one-call notification system shall perform the following duties:

(a) Provide highest priority to notices concerning the discovery of underground facilities that have unknown operators or are in danger of failing;

(b) Conduct a continuing program to:

(1) Inform excavators of the one-call notification system's existence and purpose and their responsibility to notify the one-call notification system of planned excavation and

demolition and to protect underground facilities;

(2) Inform operators of the responsibility to participate in the one-call notification system, to respond to a notice relating to a planned excavation and demolition and to designate and mark facilities according to the provisions of this Part.

(c) Provide a means by which contact information provided by the member operators can be obtained for the purpose of learning the location of underground facilities for design purposes.

(d) Provide an Automated Positive Response (APR) system for mandatory use by excavators and member operators, where determined by the one-call notification system to be technologically and economically practical.

SUBPART 753-6
ENFORCEMENT PROCEDURES

753-6.1 Scope: This Subpart describes the enforcement authority and sanctions of the Public Service Commission for achieving and maintaining compliance with 16 NYCRR Part 753. It also describes the procedures governing the exercise of that authority and the imposition of those sanctions.

753-6.2 Field citation: Upon determining that a probable violation of a provision of Part 753 has occurred, the Department may issue a field citation to a Respondent, identifying specific provisions alleged to have been violated.

753-6.3 Warning letter: Upon determining that a probable violation(s) of a provision of Part 753 has occurred or is continuing, the Department may issue a warning letter notifying the Respondent of the probable violation and advising him or her to correct it, if it is correctable, and comply henceforth, or be subject to enforcement procedures under this Part.

753-6.4 Notice of Probable Violation

(a) If the Department has reason to believe that a violation of Part 753 has occurred or is continuing, the Department may commence an enforcement proceeding by issuing a Notice of Probable Violation (NOPV).

(b) The NOPV shall include:

(1) A listing of the regulations which the Respondent is alleged to have violated, a description of the evidence on which the allegations are based and a copy of the field citation(s), if applicable;

(2) Notice of the response options available to the Respondent under Section 753-6.5 of this Subpart;

(3) If a penalty is proposed, the amount of the proposed penalty and the maximum penalty for which the Respondent may be liable; and

(4) A proposed Consent Order pursuant to Section 753-6.7 this Subpart.

(c) A NOPV may be amended at any time prior to issuance of a final order. If an amendment includes any new material allegations of fact or proposes an increased penalty, the Respondent shall have another opportunity to respond under Section 753-6.5 of this Subpart.

753-6.5 Respondent's options:
Within 30 days after issuance of a NOPV the Respondent shall respond in one of the following ways:

(a) Sign the Consent Order and return it with payment of any proposed penalty.

(b) Submit a written explanation, information or other material in response to the allegations; or

(c) Request an informal conference with Department Staff.

(d) Failure of the Respondent to respond in accordance with subdivision (a),(b) or (c) shall constitute a waiver of its right to contest the allegations in the NOPV and authorizes the Commission, without further notice to the Respondent, to find the facts to be as alleged in the NOPV and to issue a final order under Section 753-6.8 of this Subpart.

753-6.6 Commission Proceeding:

(a) If the Respondent requests an informal conference, such conference will be conducted by Department Staff. The Respondent shall have the right to be represented by an attorney or other person, and shall have the right to present relevant evidence. Any evidence that Department Staff may have which indicates that the Respondent may have violated Part 753 shall be made available to the Respondent, who shall have the opportunity to rebut this evidence, either at the informal conference, in writing within thirty days following the conference,, or by other mutually agreed to arrangements.

(b) Following its review of any material submitted in writing or at an informal conference, the Department will compile a case file, which will be the basis for a final order. The case file of an enforcement proceeding shall include:

(1) The field citations, inspection reports and any other evidence of alleged violations;

(2) A copy of the NOPV issued under Section 753-6.4 of this Subpart.

(3) Any material submitted by the Respondent in response to the NOPV or at an informal conference; and

(4) A written evaluation and recommendation for a final order.

753-6.7 Consent Orders

(a) Notwithstanding any other provision to the contrary, the Commission may at any time resolve an outstanding NOPV with a consent order. A consent order shall be signed by the Respondent to whom it is issued, or a duly authorized representative, and shall indicate agreement with the terms thereof. A consent order need not constitute an admission that the Respondent committed the violation.

(b) A consent order is a final order of the Commission having the same force and effect as a final order issued pursuant to Section 753-6.8 of this Subpart.

(c) A consent order shall not be appealable and shall include an express waiver of appeal or judicial review rights that might otherwise attach to a final order of the Commission.

753-6.8 Final Order: Based upon the review of a case file, consideration of the nature, circumstances and gravity of the violation,

history of prior violations, effects on public health, safety or welfare and such other matters as may be required, the Commission will issue a final order that includes:

(a) A statement of findings and determinations on all material issues;

(b) If a penalty is assessed, the amount of the penalty and the procedures for payment of the penalty;

753-6.9 Payment of penalties:

(a) Payment of a penalty under this subpart must be made by certified check or money order to the "Department of Public Service" and sent to the Secretary to the Commission, Three Empire State Plaza, Albany, New York 12223-1350.

(b) If a Respondent fails to pay the full amount of a penalty assessed in a final order within thirty days after receipt of the final order, the Commission may refer the case to the Attorney General with a
request that an action to collect the assessed penalty be brought in any court of competent jurisdiction.

EXCERPT FROM
PUBLIC SERVICE LAW

§119-b. Protection of underground facilities.

2. The commission shall adopt rules and regulations to implement and carry out the requirements of article thirty-six of the general business law established for the protection of underground facilities. Such rules and regulations shall include, but not be limited to, requirements for notice, one-call notification systems, participation of operators in such systems, designation and marking of the location of underground facilities and the verification of the designated or marked location of underground facilities, support for underground facilities and obligations of excavators to protect underground facilities under such article, including the use of hand-dug test holes at underground facilities furnishing gas or liquid petroleum products and such other matters as may be appropriate for the protection and security of property, life or public health, safety or welfare.

6. The commission shall have power, through the inspectors or duly authorized employees of the department, to examine and inspect excavation and demolition methods used by any person within fifteen feet in any direction of any underground pipeline used for conveying natural gas or of any underground telephone, electric, steam or water facility used for providing service and to order compliance with the standards for excavation and demolition near underground facilities contained in regulations adopted by the commission to implement and carry out the requirements of article thirty-six of the general business law established for the protection of underground facilities.

7. Notwithstanding any inconsistent provisions of this chapter, the enforcement procedure for rules and regulations adopted by the commission shall be as follows:

a. any violation of any provisions of such rules and regulations is a violation of the provisions of article thirty-six of the general business law and the attorney general may bring and prosecute an action to recover penalties for such violations as provided in paragraph c of subdivision one of section seven hundred sixty-five of such law;

b. any penalties, fines and financial liability resulting from violations of such rules and regulations shall be those specified in section seven hundred sixty-five of the general business law.

8. In the event a violation of such rules and regulations occurs and such violation is subject to a civil penalty pursuant to article thirty-six of the general business law, the commission shall determine the amount of the penalty after consideration of the nature, circumstances and gravity of the violation, history of prior violations, effect on public health, safety or welfare, and such other matters as may be required and shall send a copy of its determination to the excavator, operator, commissioner of labor and attorney general. Upon receipt of such determination, the attorney general may commence an action to recover such penalty.

EXCERPT FROM
GENERAL BUSINESS LAW

ARTICLE 36 - CONSTRUCTION AND EXCAVATION NEAR UNDERGROUND FACILITIES.

§765. Penalties and liabilities.

1. Civil penalties.

a. Failure to comply with any provision of this article shall subject an excavator or an operator to a civil penalty of up to four thousand three hundred seventy-five dollars for the first violation and up to an additional seventeen thousand five hundred dollars for each succeeding violation that occurs within a twelve month period.

b. The penalties provided for by this article shall not apply to an excavator who damages an underground facility due to the failure of the operator to comply with any of the provisions of this article nor shall in such instance the excavator be liable for repairs as prescribed in subdivision four of this section.

c. An action to recover a penalty under this article may be brought in the supreme court in the judicial district in which the violation was alleged to have occurred which shall be commenced and prosecuted by the attorney general. The public service commission shall, pursuant to section one hundred nineteen-b of the public service law, forward to the attorney general its determination of the amount of the penalty for violations of rules and regulations adopted to implement the requirements of this article. Upon receipt of such determination, the attorney general may commence an action to recover such penalty. All moneys recovered in any such action, together with the costs thereof, and all moneys recovered as the result of any such public service commission determination shall be paid into environmental protection fund established pursuant to section ninety-two-s of the state finance law.

2. Except as otherwise provided in this subdivision, nothing in this article shall impair, limit or reduce the statutory, common law or contractual duties or tort or other liability of any excavator excavating or demolishing in the vicinity of underground facilities.

3. Any excavator engaging in or proposing to engage in excavation or demolition in a negligent or unsafe manner, which has resulted in or is likely to result in damage to underground facilities in such a manner that life, property or the continuation of operator service is endangered, may be enjoined from such excavation or demolition or any aspect thereof upon application of the operator owning the facilities or the attorney general made in supreme court having jurisdiction in the county wherein the excavation or demolition or proposed excavation or demolition is to take place. Three or more instances of damage by an excavator to underground facilities in the course of the entire self-same excavation or demolition activity shall be prima facie grounds for enjoining the excavator from further performance of the excavation or demolition activity.

4. In the event that, as a result of a violation of any of the provisions of this article by an excavator, it is necessary that an operator make any repair to or provide new support to an underground facility, the excavator shall be liable to the operator for reasonable costs so incurred.

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