

CHAPTER 2

UNDERGROUND FACILITIES: ONE-CALL DAMAGE PREVENTION SYSTEM

Authority

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

Source and Effective Date

R.2007 d.298, effective August 23, 2007.
See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Chapter Expiration Date

Chapter 2, Underground Facilities: One-Call Damage Prevention System, expires on August 23, 2012.

Chapter Historical Note

Chapter 2, Protection of Underground Facilities: One-Call Damage Prevention System, was adopted as R.1996 d.467, effective October 7, 1996. See: 27 N.J.R. 3773(a), 28 N.J.R. 4489(a).

Subchapter 3, System Operator, Subchapter 4, Excavators, and Subchapter 6, Underground Facility Operators, were adopted by R.1997 d.164, effective April 7, 1997. See: 28 N.J.R. 5144(a), 29 N.J.R. 1345(a).

Chapter 2, Protection of Underground Facilities: One-Call Damage Prevention System, was readopted by R.2002 d.107, effective March 6, 2002. See: 33 N.J.R. 2606(a), 34 N.J.R. 1458(a).

Chapter 2, Protection of Underground Facilities: One-Call Damage Prevention System, was readopted as R.2007 d.298, effective August 23, 2007. As a part of R.2007 d.298, Chapter 2, Protection of Underground Facilities: One-Call Damage Prevention System, was renamed Underground Facilities: One-Call Damage Prevention System; Subchapter 2, Definitions, was recodified to N.J.A.C. 14:2-1.2; Subchapter 3, System Operator, was recodified to Subchapter 2 and renamed One-Call System Operator; Subchapter 4, Excavators, was recodified to Subchapter 3 and renamed Excavators and Responsible Contractors; Subchapter 4, Underground Facility Operators, was adopted as new rules; and Subchapter 6, Underground Facility Operators, was repealed and Subchapter 6, Violations, Penalties, and Enforcement, was adopted as new rules, effective October 15, 2007. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. SCOPE

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. Underground facility 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. Because 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 “underground facility operator,” such a homeowner is not subject

to the requirements for underground facility 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.

Amended by R.1997 d.164, effective April 7, 1997.

See: 28 N.J.R. 5144(a), 29 N.J.R. 1345(a).

Substituted "protection of underground facilities" for "temporary mark-out of underground facilities", and deleted reference to N.J.S.A. 48:2-80.

Amended by R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "Scope". Added designation (a); rewrote the introductory paragraph; and added (b), (c), (d) and (e).

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.

"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" or "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. This term includes utility pole removal, but does not include:

1. Routine maintenance of residential property or of a residential right-of-way, performed with non-mechanized equipment;

2. Routine use of a hand tool on a residential property or a residential right-of-way, to remove earth for the repair of a sprinkler system or to locate a property boundary marker, which does not remove earth to a depth of more than six inches;

3. Excavation or demolition that remains entirely within the flexible or rigid pavement box within a right-of-way, such that it does not disturb any material except for the pavement;

4. Tilling of soil for agricultural purposes to a depth of 18 inches or less, on land that has received or is eligible to receive a farmland assessment under the New Jersey Farmland Assessment Act, N.J.S.A. 54:4-23.1 et seq.;

5. Routine landscaping activities with mechanized equipment that are intended to cut only vegetation, including lawn edging and de-thatching; or

6. Routine maintenance of residential property for pest management purposes performed with non-mechanized equipment.

"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 1½ inches by 3½ 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.

“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 of others estimated at more than \$5,000;
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.

“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.

“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.

“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.

"Underground facility operator" or "operator" means a person that owns or operates, or controls the operation of, an underground facility, except that this term does 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.

"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).

Amended by R.1997 d.164, effective April 7, 1997.

See: 28 N.J.R. 5144(a), 29 N.J.R. 1345(a).

Added "Emergency", "Excavation", and "Routine"; and "One-Call Damage Prevention Center" was renamed "One-Call Damage Prevention System".

Amended by R.2002 d.107, effective April 1, 2002.

See: 33 N.J.R. 2606(a), 34 N.J.R. 1458(a).

Added "Business day", "Damage", "Excavator", "Hand digging", "Mechanized equipment", "Person", "Probe bar" and "State department or agency"; replaced "Excavation" with "Excavate" or "excavation" or "demolition"; in "One-Call Damage Prevention System", inserted "or system" preceding "means"; rewrote "Site".

Recodified from N.J.A.C. 14:2-2.1 and amended by R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "Words defined". In the introductory paragraph, inserted the last sentence; deleted definitions "Board" and "Operator"; in definition "Business day", deleted "nationally or" preceding "State"; rewrote definitions "Excavate" and "Underground facility"; added definitions "Mark", "Markout", "Nominal", "One-Call System operator", "One-Call incident", "Rented equipment", "Rented equipment operator", "Responsible contractor", "Routine maintenance of residential property or of a right-of-way", "Underground facility operator" and "Whiskers"; in definition "Probe bar", substituted "rigid" for "steel"; and in definition "Site", substituted "or demolition" for "work", inserted the second occurrence of "is" and added the last sentence.

SUBCHAPTER 2. ONE-CALL SYSTEM OPERATOR

14:2-2.1 Duties of 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 1-800-272-1000 or 811.

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

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 underground facility 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 underground facility 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 underground facility operator, in conformance with the System operator's tariff.

New Rule, R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Former N.J.A.C. 14:2-2.1, Words defined, recodified to N.J.A.C. 14:2-1.2.

14:2-2.2 Designation and term of 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 this designation if it determines, after hearing, that the designee is not operating the system in conformance with N.J.S.A. 48:2-73 et seq., this chapter and its Board-approved tariff.

(c) In the fifth 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 new five year term. 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.

Public Notice: One Call Damage Prevention System Operator Applications.

See: 31 N.J.R. 905(b), 31 N.J.R. 1113(a).
Amended by R.2002 d.107, effective April 1, 2002.

See: 33 N.J.R. 2606(a), 34 N.J.R. 1458(a).

Substituted "person" for "system operator" in the first sentence and "person" for "party" in the fourth sentence.

Public Notice: One Call Damage Prevention System Operator Applications.

See: 36 N.J.R. 3598(a).

Recodified from N.J.A.C. 14:2-3.1 and amended by R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "Designation". Rewrote the section.

Public Notice.

See: 40 N.J.R. 6870(b).

Public Notice: Withdrawal of Public Notice at 40 N.J.R. 6870(b).

See: 41 N.J.R. 684(a).

Public Notice.

See: 41 N.J.R. 1532(a).

SUBCHAPTER 3. EXCAVATORS AND RESPONSIBLE CONTRACTORS

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 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, 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 any markout that is made by an underground facilities operator. Any excavation or demolition con-

tinuing after the 45 business days shall require a new notification that meets the requirements of (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:

i. The notice shall no longer be valid;

ii. 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

iii. 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 N.J.A.C. 14:2-3.1(a), provided it meets all of the requirements at (f)1 through 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.

Amended by R.2002 d.107, effective April 1, 2002.

See: 33 N.J.R. 2606(a), 34 N.J.R. 1458(a).

Added a new (a), recodified former (a) through (d) as (b) through (e) and amended paragraph designators throughout, and added (f).

Recodified in part from N.J.A.C. 14:2-4.1 and amended by R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "Notice". Rewrote the section. Former N.J.A.C. 14:2-3.1, Designation, recodified to N.J.A.C. 14:2-2.2.

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;
2. All of the following information regarding the excavator, any rented equipment operators that will be used, and the responsible contractor, if any:
 - i. The 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 underground facility 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 underground facility operator can accurately identify the site:
 - i. The street address of the site;
 - ii. The block and lot of the site; and/or
 - iii. A description of any white perimeter markings the excavator has made in accordance with (c) below.

(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 underground facility operators, for example to indicate small sites, nonlinear excavations, and spot excavations such as a 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 under (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 underground facility 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.

Recodified in part from N.J.A.C. 14:2-4.1 and amended by R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).
Section was "Notice". Rewrote the section.

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; and
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.

(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 underground facility operator provides pursuant to N.J.A.C. 14:2-4.2(d);
2. If the underground facility operator does not provide support specifications under (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;

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

Amended by R.2002 d.107, effective April 1, 2002.

See: 33 N.J.R. 2606(a), 34 N.J.R. 1458(a).

Rewrote (b).

New Rule, R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Former N.J.A.C. 14:2-5.3, Color and letter codes for markouts, recodified to N.J.A.C. 14:2-5.2.

14:2-5.4 Centerline markouts

(a) An underground facility 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 underground facility 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.

Recodified from N.J.A.C. 14:2-5.5 and amended by R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Rewrote introductory paragraph of (a); added introductory paragraph of (b); recodified former (a)1 as (b)1; rewrote (b)1; added (b)2 and (b)3; recodified (a)2 and (a)3 as (b)4 and (b)5; rewrote (b)4; in (b)5; inserted "from Table A in N.J.A.C. 14:2-5.2," and "shall be" and deleted the former second sentence; and recodified former (b) as (c). Former N.J.A.C. 14:2-5.4, Markouts made on paved, concrete, brick or other firm surfaces, repealed.

14:2-5.5 Outside dimension markouts

(a) An underground facility 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 underground facility 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
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.

Recodified from N.J.A.C. 14:2-5.6 and amended by R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Rewrote introductory paragraph of (a); recodified former (a)1 as (b)1; deleted (a)2 and (a)3; added introductory paragraph of (b); rewrote (b)1; added (b)2 and (b)3; and recodified former (b) as (c). Former N.J.A.C. 14:2-5.5, Centerline markouts, recodified to N.J.A.C. 14:2-5.4.

14:2-5.6 Offset markouts

(a) An underground facility operator shall utilize an offset markout only if exceptional site conditions make it impossible to clearly mark the underground facility with a centerline markout under N.J.A.C. 14:2-5.4 or an outside dimension markout under 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, 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 underground facility operator shall not utilize a centerline offset markout but instead shall utilize a centerline markout or outside dimension markout.

Recodified from N.J.A.C. 14:2-5.7 and amended by R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Added new (a); recodified former (a) through (f) as (b) through (g); rewrote (c)1 through (c)3; deleted (c)4; rewrote (d) and (f); and added (h). Former N.J.A.C. 14:2-5.6, Outside dimension markouts, recodified to N.J.A.C. 14:2-5.5.

14:2-5.7 (Reserved)

Recodified to N.J.A.C. 14:2-5.6 by R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "Offset markouts".

14:2-5.8 (Reserved)

Repealed by R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "Markouts made on non-firm surfaces".

14:2-5.9 (Reserved)

Repealed by R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "Records of markouts".

14:2-5.10 (Reserved)

New Rule, R.1997 d.164, effective April 7, 1997.

See: 28 N.J.R. 5144(a), 29 N.J.R. 1345(a).

Repealed by R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "Markouts around white perimeter markings".

SUBCHAPTER 6. VIOLATIONS, PENALTIES, ENFORCEMENT

14:2-6.1 Violations in general

(a) Whenever it appears to the Board that a person has violated any provision of this chapter, or an order adopted pursuant to this chapter, the Board may issue an order:

1. Specifying the provision or provisions of which the person is in violation;
2. Citing the action which constituted the violation;
3. Ordering abatement of the violation; and
4. Giving notice to the person of the right to a hearing on the matters contained in the order.

(b) An order issued under (a) above shall be effective upon receipt, and any person to whom such order is directed shall comply with the order immediately.

(c) 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.

Amended by R.2002 d.107, effective April 1, 2002.

See: 33 N.J.R. 2606(a), 34 N.J.R. 1458(a).

In (a), added 3.

Repeal and New Rule, R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "General Requirements".

14:2-6.2 Injunction, civil penalties

(a) The Board may institute an action or proceeding in the Superior Court for injunctive and other relief for any violation of this chapter, or of an order issued pursuant to this chapter.

(b) In an action instituted under (a) above, the Board may seek one or more of the following:

1. A temporary or permanent injunction, in accordance with (c) below;
2. A civil penalty, in accordance with (d) below;
3. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation; and/or
4. Assessment of the violator for the reasonable costs of preparing and litigating the case.

(c) If a person whose repeated failure to comply with this chapter constitutes a threat to public safety, the Board or an affected underground facility operator may institute an action in the Superior Court to enjoin the person from engaging in any further excavation or demolition within New Jersey, except under such terms and conditions as the Superior Court may prescribe to ensure public safety.

(d) An underground facility operator or an excavator, or the One-Call System operator, that violates any provision of this chapter or an order adopted pursuant thereto, shall be liable to a civil penalty not to exceed the amount set forth in N.J.S.A. 48:2-88, as amended or supplemented, except as provided at (e) below. As of October 15, 2007, N.J.S.A. 48:2-88 provided for a penalty of not less than \$1,000 and not

more than \$2,500 per day for each day the violation continues, except that the maximum civil penalty may not exceed \$25,000 for any related series of violations.

(e) Notwithstanding any provisions of this chapter or 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 not to exceed the amount set forth in N.J.S.A. 48:2-86, as amended or supplemented. As of October 15, 2007, N.J.S.A. 48:2-86 provided for a penalty not to exceed \$25,000 for each violation for each day the violation continues, except that the maximum civil penalty may not exceed \$500,000 for any related series of violations.

(f) Any civil penalty imposed pursuant to this section may be compromised by the Board. In determining the amount of the penalty, or the amount agreed upon in compromise, the Board shall consider the nature, circumstances, and gravity of the violation; the degree of the violator's culpability; any history of prior violations; the prospective effect of the penalty on the ability of the violator to conduct business; any good faith effort on the part of the violator in attempting to achieve compliance; the violator's ability to pay the penalty; and other factors the Board may determine appropriate concerning a particular violator.

(g) The amount of the penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the State to the person charged, or may be recovered, if necessary, in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.A. 2A:58-1 et seq.).

(h) 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.

Amended by R.2002 d.107, effective April 1, 2002.

See: 33 N.J.R. 2606(a), 34 N.J.R. 1458(a).

In (a)2, inserted "department or" preceding "agency operator".

Repeal and New Rule, R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "Markout exemptions".

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.

Repeal and New Rule, R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "Interstate natural gas or hazardous liquid pipelines".

14:2-6.4 Civil penalties to the State

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

Amended by R.2002 d.107, effective April 1, 2002.

See: 33 N.J.R. 2606(a), 34 N.J.R. 1458(a).

Rewrote (b).

Repeal and New Rule, R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "Operator waivers".

14:2-6.5 (Reserved)

New Rule, R.2000 d.1, effective January 3, 2000.

See: 30 N.J.R. 4130(a), 32 N.J.R. 63(a).

Amended by R.2002 d.107, effective April 1, 2002.

See: 33 N.J.R. 2606(a), 34 N.J.R. 1458(a).

In (b), rewrote 4 and added 5; in (c), inserted "for" preceding "which there" and substituted "a 'reportable accident' " for "reportable accidents" in the first sentence and added the third sentence.

Repealed by R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "Reportable accidents".