

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Underground Facilities: One-Call Damage Prevention System

Proposed Readoption with Amendments: N.J.A.C. 14:2

Authorized By: New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra Chivukula, and Robert M. Gordon, Commissioners.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: EX20090613.

Proposal Number: PRN 2021-115.

The deadline for comments on this matter is 5:00 P.M. on February 4, 2022. While all comments will be given equal consideration and will be made part of the final record of this proceeding, the preferred method of transmittal is through the Board's Public Document Search, <https://publicaccess.bpu.state.nj.us>, tool, by searching for the specific docket listed above and using the "Post Comments" button. Emailed comments may also be filed with the Board Secretary, in PDF or Word format, to rule.comments@bpu.nj.gov.

Written comments may be submitted to:

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All comments are considered "public documents" for purposes of the State's Open Public Records Act. Commenters may identify information that they seek to keep confidential by submitting it in accordance with the confidentiality procedures set forth at N.J.A.C. 14:1-12.3.

The agency proposal is as follows:

Summary

The Board of Public Utilities (Board) is proposing to readopt its rules governing the One-Call Damage Prevention System, the Board-designated One-Call System operator, operators of underground facilities (operators), excavators, and responsible contractors, found at N.J.A.C. 14:2, with amendments. In accordance with N.J.S.A. 52:14B-5.1, the current rules were scheduled to expire on February 11, 2022, and are being amended to address the Appellate Division decision *In re adoption of N.J.A.C. 14:2*, 2017 N.J. Super. Unpub. LEXIS 2095, at *14 (App. Div. Aug. 18, 2017). As the Board has filed this notice of readoption prior to the expiration date, the expiration date is extended 180-days to August 10, 2022, pursuant to N.J.S.A. 52:14B-5.1.c.

The New Jersey Legislature, recognizing the potential hazards posed by underground facilities and that damage to underground facilities caused by excavation or the discharge of explosives poses a significant risk to public safety, enacted the Underground Facility Protection Act (UFPA), N.J.S.A. 48:2-73 et seq. Within the UFPA, the Legislature determined that the Board is the appropriate State agency to designate the operator of, and provide policy oversight to, the One-Call Damage Prevention System and to enforce the provisions of the UFPA. The Board adopted N.J.A.C. 14:2, Protection of Underground Facilities: One-Call Damage Prevention System, to provide for the implementation, administration, and enforcement of the UFPA.

The One-Call Damage Prevention System satisfies a Federal mandate. 49 U.S.C. § 60114 describes the minimum requirements for states establishing and operating a one-call notification system. 49 U.S.C. § 60114(a) (authorizing the Secretary of Transportation to prescribe regulations providing minimum requirements for establishing a one-call notification system for states, which shall include the requirements that "the system apply to all areas of the State containing underground pipeline

facilities" and "all operators of underground pipeline facilities participate in an appropriate one-call notification system").

The rules proposed for readoption with amendments are summarized below. Effective February 11, 2015, the rules were readopted without change. The appellate court's decision in *In re Readoption of N.J.A.C. 14:2*, No. A-3913-14T2 (App. Div. Aug. 18, 2017), determined that the Board needed to amplify its responses to comments and fully explain why the rules were adopted without change within 90 days. Alternatively, the Board could amend N.J.A.C. 14:2-4.2(c). Board staff has responded to the Appellate Division's decision with a rulemaking, beginning with a pre-proposal process in accordance with N.J.S.A. 52:14B-4(e). A total of four informal stakeholder workshops took place, the first of which occurred on September 9, 2018. The purpose of these meetings was to fully address possible amendments at N.J.A.C. 14:2-4.2(c), any issues, and their effect on the stakeholder community. Prior to the stakeholder meetings, the Board collected comments from the stakeholder community. Board staff and the stakeholders discussed the comments at the meetings, which included potential amendments at N.J.A.C. 14:2-4.2(c). The stakeholder comments relating to N.J.A.C. 14:2-4.2(c) and the Board's rationale behind the proposed amendments are outlined in greater detail in Subchapter 4 of the Summary section. Additionally, it should be noted that, throughout the chapter, minor clarifying and/or technical amendments are proposed that do not change the meaning of the text.

Subchapter 1. Scope

N.J.A.C. 14:2-1.1 outlines the scope of the UFPA, delineates the entities that the rules apply to, and establishes the One-Call Damage Prevention System. The word "because" at paragraph (d)1, that relates to the application of the rules to particular homeowners, is proposed to be deleted.

N.J.A.C. 14:2-1.2 contains definitions of words and terms used throughout the chapter. "Excavate" has been revised to match the UFPA's statutory definition. The "One Call incident" threshold for property damage has been increased from \$5,000 to \$122,000. This amount is consistent with Federal rules. The term "underground facility operator" has been amended to "Operator," which change is also made throughout the chapter. Lastly, a definition for "Terrestrial LiDAR" has been added.

Subchapter 2. One-Call System Operator

N.J.A.C. 14:2-2.1 sets forth the duties of the One-Call System operator, which must staff the One-Call center with representatives who are tasked with, among other things, receiving the excavator's notice of intent to excavate, transmitting the notice to excavate to the appropriate operators, and maintaining records relating to the notice to excavate. Language relating to the contact information for the One-Call center has been added, which pertains to out-of-State callers.

N.J.A.C. 14:2-2.2 provides the designation and term of the One-Call System operator. Language relating to the term of the One-Call System operator has been added to improve clarity.

Subchapter 3. Excavators and Responsible Contractors

N.J.A.C. 14:2-3.1 provides the timing requirements for the notice of intent to excavate, and the One-Call center must be notified of the intent to excavate no less than three business days before the beginning of the excavation or demolition. The proposed language clarifies the One-Call center contact information for in- and out-of-State excavators and responsible contractors.

N.J.A.C. 14:2-3.2 provides the contents and perimeter marking requirements for the notice of intent to excavate. The requirement to provide contact information of a person knowledgeable about the excavation to be performed has been added at paragraph (b)1. The Board is proposing, at new subparagraph (b)6iv, that the excavator may utilize GPS coordinates on large parcels of land in conjunction with white paint, among other methods identified at paragraph (b)6, as is necessary to ensure that the operators can accurately identify the site.

N.J.A.C. 14:2-3.3 provides the on-site duties and requirements for excavators. Proposed additional requirements for excavators to show Board staff identification and a copy of the One-Call notification upon request have been added at new paragraphs (a)5 and 6.

N.J.A.C. 14:2-3.4 provides the responsible contractor duties and requirements.

N.J.A.C. 14:2-3.5 provides the requirements for excavation or demolition in response to an emergency. The Board is adding subsection (g) to state that emergency notifications shall only be valid for the duration of the emergency, as defined at N.J.A.C. 14:2-1.2. Additionally, proposed subsection (g) would require an excavator to submit a routine markout request if a temporary repair would need additional excavation.

N.J.A.C. 14:2-3.6 provides the incident and damage reporting requirements for excavators. An additional requirement to provide the One-Call center with emergency contact information of a person knowledgeable about the excavation to be performed is proposed to replace the current language at subsection (b). The word “other” has been removed from N.J.A.C. 14:2-3.6(d)2, as it is superfluous.

Subchapter 4. Operators

N.J.A.C. 14:2-4.1 provides the criteria for applicability to operators. Language is proposed at subsection (b) to clarify “reasonable efforts” to aid excavators in determining the location of facilities that are exempt from this subchapter. For instance, the excavator could determine the location of the relevant facilities by ascertaining the location of the meter and curb shutoff, among other considerations.

N.J.A.C. 14:2-4.2 provides basic requirements for operators, which include the ability to receive a transmittal of a notice to excavate from the One-Call System operator and the duty to mark out its underground facilities within three business days after receiving the notice of intent to excavate. Proposed new subsection (b) has been added to bar an operator’s right of recovery from an excavator or responsible contractor of any costs associated with damage to the operator’s lines if the operator fails to participate in the One-Call Damage Prevention System, as required pursuant to N.J.S.A. 48:2-80, and the operator has not received any notice of excavation due to the operator’s failure to participate in the One-Call Damage Prevention System. Additionally, pursuant to proposed new subsection (c), an operator would be liable for any costs, labor, parts, equipment, and personnel downtime that are incurred by an excavator who damaged a facility owned, operated, or controlled by the operator, if the operator failed to mark out or locate its facilities pursuant to N.J.A.C. 14:2-4.2. Furthermore, the Board is proposing that an electric positive response to the System operator shall be mandatory for all operators at recodified subsection (d). The term “control(s) the operation of” has been added for clarification throughout the recodified subsection.

Pursuant to the Appellate Division’s decision in *In re Readoption of N.J.A.C. 14:2*, the Board proposes to delete existing N.J.A.C. 14:2-4.2(c). N.J.A.C. 14:2-4.2 required operators to mark out any underground facilities on the site of a proposed excavation if the operators own, operate, or control those facilities. N.J.A.C. 14:2-4.2(c) noted that “an underground facility operator shall be deemed to control any all portions of an underground facility carrying metered service, which are not located on the customer’s side of the meter, regardless of who owns the property.” The appellants in *In re Readoption of N.J.A.C. 14:2*, which consisted of water and wastewater companies, and stakeholders in the pre-proposal meetings raised several concerns regarding the language at existing N.J.A.C. 14:2-4.2(c). First, the appellants objected to the “deemed to control” language and argued that since water companies merely use the utility lines, such utilities should not be required to mark out the water facilities. Instead, as the appellants and stakeholders noted, such utility lines that extend from the curb to the customer’s or homeowner’s building are owned and tend to be controlled by the customer or homeowner, not the water companies. However, as Board staff reasons, the appellants’ and stakeholders’ comments would create the possibility of having an unmarked water line in a worksite, as a homeowner is not required to mark out its residential underground facilities under the homeowner exemption at N.J.S.A. 48:2-75.

Second, several water companies argued that they do not have access to a customer’s property to perform markouts. A utility’s right of reasonable access to the customer’s premises is addressed at N.J.A.C. 14:3-3.6(a). Pursuant to the regulation, “[t]he utility shall have the right of reasonable access to customer’s premises, and to all property furnished by the utility, at all reasonable times for the purpose of inspection of customer’s premises incident to the rendering of service, collection of coin boxes, reading meters, or inspecting, testing, or repairing its facilities used in connection with supplying the service, or for the removal of its property.” The access granted to the company by the customer protects

the underground facilities from harm and prevents property damage. Board staff notes that with the exception of large industrial properties, electric, gas, and telecommunications companies perform markouts despite any issues of access. Nevertheless, the Board is proposing additional requirements for markout requests pursuant to N.J.A.C. 14:2-3.2 to improve communications between the operator and the excavator, which would alleviate issues of access. Excavators will be required to provide contact information of a person that is “knowledgeable about the excavation to be performed.” This contact is also available to the operator to address issues, including access issues, and provide operators with additional information.

Lastly, stakeholders commented that water lines beyond the curb line are plastic and, thus, cannot be readily located and marked pursuant to the operator’s markout requirements at N.J.A.C. 14:2-4.2. In response, Board staff cites to N.J.S.A. 48:2-81(a) and N.J.A.C. 14:2-4.1(b) and notes that operators of underground non-metallic water pipes or non-metallic water distribution facilities that were installed prior to November 18, 1994, are already exempt from the markout requirements. However, current building codes require non-metallic lines to be installed with tracer wires.

Through debate and discussion at the stakeholder meetings, Board staff observed that the exclusion of water companies from the markout requirements at N.J.A.C. 14:2-4.2 would lead to harmful impacts to all other stakeholder groups, such as excavation companies, utilities, and homeowners. Damage to underground facilities, such as water and wastewater facilities, would adversely impact public safety, as the New Jersey Legislature determined at N.J.S.A. 48:2-74. Furthermore, the exclusion of water companies from the UFPA and the One-Call rules would improperly ignore the New Jersey Legislature’s intent to “require all operators of underground facilities to participate in a One-Call Damage Prevention System.” N.J.S.A. 48:2-74. In considering the appellants’ and stakeholders’ comments, the Board proposes to delete existing N.J.A.C. 14:2-4.2(c). While Board staff notes that the language at existing N.J.A.C. 14:2-4.2(c) is unnecessary, the amendment to delete existing N.J.A.C. 14:2-4.2(c) would not change the requirement of operators to mark lines that they own, operate, or control the operation of, as required in the UFPA. The UFPA promotes the Legislature’s intent to prevent damage to underground facilities, including water and wastewater facilities, ensure the safety of all parties, and require all operators that own, operate, or control the operation of underground facilities to participate in the One-Call Damage Prevention System. See N.J.S.A. 48:2-74 and 48:2-80. Therefore, the Board has determined that it is necessary and appropriate that water companies participate in, and comply with, the requirements of the One-Call Damage Prevention System, pursuant to N.J.S.A. 48:2-80.

N.J.A.C. 14:2-4.3 provides markout record requirements for operators. Requirements for photographic and visual records of the markouts have been added and updated to fully utilize current technology. For instance, paragraph (c)4 would be replaced to require the visual record to be transmitted in a format that includes metadata of the date, time, and location.

N.J.A.C. 14:2-4.4 provides requirements for operators in reporting and responding to accidents and emergencies. The Board proposes to amend subsection (b) to require operators to comply with paragraphs (b)1, 2, and 3 within one hour after learning of an emergency, instead of within two hours. Pursuant to proposed new paragraph (b)3, if an operator receives a report of an accident or emergency, the operator would be required to update the status of the markout request with additional details, through positive response. Electronic positive response is required for emergencies and includes the statuses “marked,” “cleared,” and “dispatched.” Additionally, at proposed new subsection (e), the Board suggests operators use Terrestrial LiDAR, Ground Penetrating Radar, or other new surveying technologies to preserve the scene of a reportable One-Call incident when damage to an underground facility amounts to at least \$122,000 in property damages or causes bodily injury. Furthermore, at proposed new subsection (g), in submitting a follow-up notice of the One-Call incident to the Board, the operator would be required to include all pictures of the incident and a timeline of events in the follow-up report. Language consistent with 49 CFR 190.203(e) has been added regarding the obstruction of inspections and investigations without good cause at proposed new subsection (h).

Subchapter 5. Markouts

N.J.A.C. 14:2-5.1 provides general markout provisions. The cross-reference has been corrected at subsection (a). Back-flagging and marking newly installed facilities have been added to the marking requirements at proposed new subsection (d). Through this change, an excavator must be notified about the newly installed facilities through email and by updating the positive response if there is a valid notice of intent to excavate in the scope of the work area where the facilities have been installed.

N.J.A.C. 14:2-5.2 provides specifications for marks used in markouts. Links for documents incorporated by reference have been updated and requirements for information printed on flags have been updated. In addition, proposed new Table B has been added to provide further information to excavators regarding the type of facility and the infrastructure materials. Operators are required to provide letter designation codes on their markouts, as described in the proposed table.

N.J.A.C. 14:2-5.3 sets forth the four types of markouts.

N.J.A.C. 14:2-5.4 provides requirements for centerline markouts.

N.J.A.C. 14:2-5.5 provides requirements for outside dimension markouts.

N.J.A.C. 14:2-5.6 provides requirements for offset markouts.

Subchapter 6. Violations, Penalties, Enforcement

N.J.A.C. 14:2-6.1 establishes general provisions relating to violations and the Board's authority to impose civil penalties through a Notice of Probable Violation (NOPV), Final Order of Penalty Assessment (FOPA), an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA), a Superior Court action, or any other legally permissible means.

N.J.A.C. 14:2-6.2 establishes penalty amounts for violations of the One-Call rules, the UFPA, or an order adopted pursuant thereto.

N.J.A.C. 14:2-6.3 provides that failure to provide notice as required by this chapter is prima facie evidence of negligence.

N.J.A.C. 14:2-6.4 provides the requirements for notices of probable violation to an alleged violator.

N.J.A.C. 14:2-6.5 provides the requirements for a response by an alleged violator to a notice of probable violation. Language regarding the alleged violator's Answering Certification and any accompanying proofs have been added at subsection (b) to improve clarity. Namely, in submitting its Answering Certification to the Board, the alleged violator would be required to provide proofs by both picture and narrative of the alleged violator's innocence relating to the violation charged.

N.J.A.C. 14:2-6.6 provides procedures and penalties for failure of an alleged violator to submit answering certification.

N.J.A.C. 14:2-6.7 sets forth notice of administrative order and civil administrative penalty assessment requirements.

N.J.A.C. 14:2-6.8 sets forth adjudicatory hearing requirements.

N.J.A.C. 14:2-6.9 sets forth actions the Board may institute in Superior Court and the remedies available, as well as actions an affected operator may institute in Superior Court for injunctive relief.

N.J.A.C. 14:2-6.10 provides the basis for criminal prosecution for violations of this chapter.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements set forth at N.J.A.C. 1:30-3.1 and 3.2, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments will have a favorable social impact in that the One-Call System greatly reduces the chance that underground facilities will be damaged during excavation or demolition activities, thereby resulting in less danger to excavators and bystanders, fewer service outages, and less property damage. The rules proposed for readoption will maintain the effectiveness of the One-Call System by facilitating the flow of information among excavators, operators, and Board staff, to help all parties work together to minimize the risk of accidents involving underground facilities.

Economic Impact

The entities regulated by this chapter are excavators, responsible contractors, and operators. The One-Call rules require excavators or responsible contractors to provide three business days' advance notice of

an excavation or demolition, and to conduct the excavation or demolition in accordance with the requirements designed to protect underground facilities, the excavator, other parties at the site, and the public. Excavators or responsible contractors must also keep records and report damage or dangerous conditions. These requirements result in minimal, if any, costs to excavators and responsible contractors. This chapter has always imposed some costs on operators and will continue to do so, in that they are required to mark out the location of their underground facilities, maintain records of all markouts, and maintain records of damage, accidents, and emergencies related to excavation or demolition. These requirements do impose some moderate costs on operators. However, these requirements are key to ensuring public health and safety in light of the special dangers posed by excavation or demolition in proximity to underground facilities. In addition, many of these requirements are the minimum required by the Underground Facility Protection Act. None of the proposed amendments will have an adverse economic impact.

Federal Standards Analysis

N.J.S.A. 52:14B-22 through 24 requires State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The rules proposed for readoption with amendments do not exceed any Federal standards. Under the Federal Pipeline Safety Act (Act), 49 U.S.C. §§ 60101 and 60105, certain Federal funding for the State is conditioned on the implementation of a State One-Call program. The Federal Pipeline Safety Act does not require that a state implement a One-Call program. However, if the state implements such a program and other pipeline safety programs, the Act provides funding to the state for these programs.

Jobs Impact

The Board anticipates that the rules proposed for readoption with amendments will have little or no impact on jobs in New Jersey. The rules proposed for readoption continue existing requirements for which any needed personnel are already in place. The rules proposed for readoption do not increase the number of employees that would be required by any of the entities regulated by the rules.

Agriculture Industry Impact

N.J.A.C. 14:2 has not, to date, had any impact on the agriculture industry in New Jersey, and no such impact is anticipated as a result of the rules proposed for readoption with amendments.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments at N.J.A.C. 14:2 will impose some recordkeeping, reporting, or other compliance requirements on small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 full-time employees. The entities regulated by this chapter are excavators, responsible contractors, and operators. Although it is impossible to determine specific numbers, most excavators and responsible contractors, and many operators, are small businesses as defined by the Regulatory Flexibility Act. The One-Call rules require excavators or responsible contractors to provide three business days' advance notice of an excavation or demolition, and to conduct the excavation or demolition in accordance with requirements designed to protect underground facilities, the excavator, other parties at the site, and the public. Excavators or responsible contractors must also keep records and report damage or dangerous conditions. These requirements result in minimal, if any, costs to excavators and responsible contractors. The One-Call rules require operators to respond to notices from the One-Call System, perform markouts, provide specifications for supporting underground facilities during excavations, maintain records of all markouts, and maintain records of all damage, accidents, and emergencies related to excavation or demolition. These requirements do impose some moderate costs on operators. However, because of the importance of these requirements to ensuring public health and safety, the Board has not included special provisions for small businesses. Compliance with these rules will not require professional services. The requirements in many cases follow well-known national standards, and Board staff conducts ongoing training and outreach to excavators and operators to ensure that the regulated community understands the rules

and to make compliance as easy as possible. Neither the Underground Facility Protection Act nor this chapter provide lesser requirements based upon the size of a business. Since these rules are essential for the protection of the health, welfare, and safety of the public, and for the prevention of damage to public and private property, the Board does not believe that lesser requirements based upon business size are appropriate.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have no impact on the affordability of housing in New Jersey and will not evoke a change in the average costs associated with housing because the rules pertain to the regulation of operators performing excavation or demolition.

Smart Growth Development Impact Analysis

The Board anticipates that the rules proposed for readoption with amendments will have no impact on smart growth, and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules only pertain to the regulation of operators, excavators, responsible contractors, and the One-Call System Operator.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The rules proposed for readoption with amendments will have no impact on pretrial detention, sentencing, probation, and parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14:2.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. SCOPE

14:2-1.1 Scope and applicability

(a) (No change.)

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

1. (No change.)

[2. Underground facility operators;]

2. Operators;

3.-4. (No change.)

(c) (No change.)

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

1. [Because a] 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,” **and** such a homeowner is not subject to the requirements for [underground facility] operators at N.J.A.C. 14:2-4; and

2. (No change.)

(e) (No change.)

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.

...
[“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.; or

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

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

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

1.-4. (No change.)

5. Damage to the property [of others] estimated at more than \$[5,000]**122,000**;

6.-10. (No change.)

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

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

...
[“Underground facility 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.]

...

SUBCHAPTER 2. ONE-CALL SYSTEM OPERATOR

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

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

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

1.-4. (No change.)

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. (No change.)

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.

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

(a) (No change.)

(b) The term of the System operator shall be five years, but the Board may rescind, **extend, or modify** this designation if it determines, [after hearing,] that [the designee is not operating the system] **a modification is required for the operation of the System** in conformance with N.J.S.A. 48:2-73 et seq., this chapter, and its Board-approved tariff.

(c) In the [fifth] **final** year of a System operator's term, the Board shall advertise the System operator position in the New Jersey Register and in newspapers of general circulation and comply with all applicable rules of the New Jersey Department of the Treasury.

(d) The Board shall accept applications and shall designate a person as the System operator for a [new five year] term, **consistent with the New Jersey Department of the Treasury guidelines**. In choosing a System operator, the Board shall select the applicant that will best operate the [system] **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) (No change.)

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] **in New Jersey, out-of-State, 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) (No change.)

(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] the markout that is made by an [underground facilities] operator. Any excavation or demolition continuing after the 45 business days shall require a new notification that meets the requirements [of] **at** (a) above.

(d)-(e) (No change.)

(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)] **(a) above**, provided it meets all of the requirements at (f)1 [through], **2, and 3** below. Instead, such an excavation may be started immediately after notice to the One-Call center.

1.-3. (No change.)

(g) (No change.)

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

(a) (No change.)

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

1. The name and telephone number of the person notifying the One-Call center, **including the contact information of a person knowledgeable about the excavation to be performed**;

2. [All of the] **The** following information regarding the excavator, any rented equipment operators that will be used, and the responsible contractor, if any:

i. [The name] **Name** and address;

ii.-iii. (No change)

3.-5. (No change.)

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. (No change.)

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[.]; **and/or**

iv. On large parcels of land where white paint is used, GPS coordinates may be used, in decimal degrees, to further aid in identifying the area of excavation.

(c) Where appropriate, to clearly identify the site of a planned excavation or demolition, an excavator or responsible contractor may choose to mark the perimeter of the site in white, prior to notifying the One-Call center. White perimeter marking is encouraged in order to minimize unnecessary marking and locating by the [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) (No change.)

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

1. (No change.)

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.-4. (No change.)

14:2-3.3 Excavators—onsite requirements

(a) An excavator or responsible contractor shall:

1.-2. (No change.)

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[.];

5. Provide identification in the form of company credentials or a State-issued ID to Board staff upon request; and

6. Provide a paper or electronic copy of the One-Call notification to Board staff upon request.

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

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

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

3. (No change.)

4. The [underground facility] operator may, by mutual agreement with the excavator, choose to [itself] provide the physical support.

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

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

(a)-(f) (No change.)

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

14:2-3.6 Excavators—incident and damage reporting

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

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

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

(c) (No change.)

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

1. (No change.)

2. Any [other] condition or configuration relating to an underground facility, which, in the excavator’s judgment, has the potential to pose a danger to health and safety, and which is not covered [under] pursuant to (a) or (b) above.

(e) (No change.)

SUBCHAPTER 4. [UNDERGROUND FACILITY] OPERATORS

14:2-4.1 Applicability

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

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

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

1.-6. (No change.)

(d) (No change.)

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

14:2-4.2 [Underground facility operators] Operators—basic requirements

(a) An [underground facility] operator shall ensure that it is fully equipped and available to receive from the One-Call center the

information required [under] pursuant to N.J.A.C. 14:2-3.2 regarding a planned excavation or demolition.

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

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

(b) (d) Within three business days after receiving information from the [One-Call center] System operator regarding a planned excavation or demolition, an [underground facility] operator shall provide an electronic positive response to the System operator and do either of the following:

1. If the [underground facility] operator owns, operates, or controls the operation of any underground facilities on the site, the [underground facility] operator shall mark out the site as required [under] pursuant to N.J.A.C. 14:2-5, except if a facility is exempt from markout requirements [under] pursuant to N.J.A.C. 14:2-4.1(b) or (c)]. If an underground facility operator does not own or operate a facility, but controls it, the operator is responsible for compliance with this paragraph]; or

2. If the [underground facility] operator does not own, operate, or control the operation of any underground facilities on the site, the [underground facility] operator shall [make a reasonable effort to] notify the excavator of that fact.

(c) For the purposes of (b) above, an underground facility operator shall be deemed to control all portions of an underground facility carrying metered service, which are not located on the customer’s side of the meter, regardless of who owns the property. For example, if a residential electric customer owns an underground electric line, which provides electricity from the street to the customer’s electric meter in an area served by overhead electric lines, the electric utility shall be deemed to control that underground electric line.]

(d) (e) An [underground facility] operator shall provide to the excavator specifications for supporting any underground facility on the site, which requires physical support during excavation or demolition, including the type, strength, and arrangement of the support. In accordance with N.J.A.C. 14:2-3.3[(e)4], if the parties mutually agree, the [underground facility] operator shall provide such support.

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

1. (No change.)

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

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

14:2-4.3 [Underground facility operators] Operators—markout records

(a)-(b) (No change.)

(c) In addition to the markout record required [under] pursuant to (a) above, an [underground facility] operator [may choose to] shall make and

maintain a visual record of the markout using photography [or] **and** other visual documentation. [If the underground facility operator chooses to make a photographic record, the] **The record [should] shall:**

1.-3. (No change.)

4. Be emblazoned with an automatic date or time stamp at the time the record is made.]

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

(d) (No change.)

14:2-4.4 [Underground facility operators] **Operators**—accidents and emergencies

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

(b) When an [underground facility] operator receives a report of an emergency, the [underground facility] operator shall do both of the following immediately, and in all cases within [two] **one hour[s]** after learning of the emergency:

1. Dispatch appropriate personnel to the site to assist in locating and protecting underground facilities; [and]

2. Take any other action necessary to assist in minimizing danger and/or damage[.]; **and**

3. Update the electronic positive response with the appropriate status (“marked,” “cleared,” or “dispatched”).

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

(d) Whenever an [underground facility] operator is notified of a One-Call incident, the operator shall immediately, and in no event later than one hour after notice of the incident, contact the Board’s Division of Reliability and Security [at (973) 648-2066, or at (800) 817-6715 outside of business hours,] **through email** and shall [verbally] provide the location and a brief description of the incident.

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

[(e)] (f) (No change in text.)

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

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

[(g)] (i) Each operator of an underground facility that handles natural gas or hazardous liquids shall submit a “hits report” listing any damage, emergency, or One-Call incident involving the operator’s natural gas or hazardous liquids facilities. The report shall be [made on forms provided by the Board on its website at www.bpu.state.nj.us and shall be] submitted to the Board by the close of business on Tuesday of the week following any two-week period in which any such damage, emergency, or One-Call incident has occurred.

[(h)] (j) All [underground facility] operators shall submit the following report(s) to the Board, as applicable:

1. An [underground facility] operator with facilities that have sustained any damage, as defined at N.J.A.C. 14:2-1.2, during a quarter shall submit a “hits report,” including all damage occurring to its facilities during that quarter. No quarterly report is required from an [underground facility] operator that has had no damage to its facilities during that quarter;

2. Any [underground facility] operator that has had no damage to its facilities during a year shall submit an annual “no hits” report. The “no hits” report shall be submitted on January 30th of each year; and

3. [Both the quarterly and annual reports] **Reports** required [under] **pursuant to** this subsection shall contain the contact information for the qualified response personnel described [under N.J.A.C. 14:2-4.4(a)] **pursuant to (a) above.**

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

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

SUBCHAPTER 5. MARKOUTS

14:2-5.1 General markout provisions

(a) When an [underground facility] operator is required [under] **pursuant to** N.J.A.C. 14:2-[2.1(b)]**4.2(b)** to mark out a site, the [underground facility] operator shall perform the markout in accordance with this subchapter.

(b) (No change.)

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

(d) All facilities newly installed by the operator shall be back flagged and marked according to N.J.A.C. 14:2-5.2, upon completion of the installation. If there is a valid notice of intent to excavate in accordance with N.J.A.C. 14:2-3.1 in the scope of the work area where the facilities have been installed, the excavator must be notified about the newly installed facilities. This shall be done through email and by updating the positive response.

14:2-5.2 Specifications for marks used in markouts

(a) An [underground facility] operator shall perform all markouts using paint. In addition, if the markout must be made on a non-firm surface including, but not limited to, grass, dirt, gravel, or sand, or if weather or site conditions may make paint difficult to use or see, the [underground facility] operator shall utilize paint, and, in addition, shall utilize stakes and/or flags. If used, the location of any stakes or flags shall conform to the diagrams [in] **at** chapter Appendix A, incorporated herein by reference.

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

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

(d) (No change.)

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

(f) An [underground facility] operator shall place all marks used to indicate a particular facility at intervals of 25 feet or less. However, the

[underground facility] operator shall place marks closer together than 25 feet, if necessary, to clearly indicate the location and direction of the underground facility. For example, site conditions or directional changes of the underground facility may necessitate a shorter distance between marks in order to clearly indicate the location and direction of an underground facility.

(g) (No change.)

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

(i)-(j) (No change.)

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

Table B

Infrastructure Material

ABS	Acrylonitrile - Butadiene - Styrene
ACP	Asbestos Cement Pipe
CL	Cast Iron
CMC	Cement Mortar Coated
CML	Cement Mortar Lined
CMP	Corrugated Metal Pipe
CPP	Corrugated Plastic Pipe
CU	Copper
CWD	Creosote Wood Duct
HDPE	High Density Polyethylene
MTD	Multiple Tile Duct
PLA	Plastic (conduit or pipe)
RCB	Reinforced Concrete Box
RCP	Reinforced Concrete Pipe
RF	Reinforced Fiberglass
SCCP	Steel Cylinder Concrete Pipe
STL	Steel
VCP	Vertrified Clay Pipe

[(k)] (l) The [underground facility] operator shall ensure that all colors used in markouts meet the standards in Standard Z535.1-2017 of the American National Standards Institute, Inc., which is incorporated herein by reference, as amended and supplemented, and is available at http://www.nema.org/stds/complimentary-docs/upload/ansi_Z535.1.pdf <https://www.nema.org/Standards/Pages/American-National-Standard-for-Safety-Colors.aspx>.

[(l)] (m) The [underground facility] operator shall ensure that all flags used in markouts shall be:

1.-6. (No change.)

7. Marked with the [underground facility] operator’s initials or logo in black letters or symbols at least one inch high, **the operator’s phone number, the telephone number of the New Jersey One-Call Damage Prevention System operator (811 in New Jersey, or out-of-State, 1-800-272-1000), and the current web address (URL) of the One-Call Damage Prevention System operator, that may be encoded in a QR code;** and

8. Marked with the [underground facility] operator’s telephone number or the telephone number of the New Jersey One-Call Damage Prevention Center (811 in New Jersey, or out-of-State, 1-800-272-1000), in letters at least one inch high.

[(m)] (n) The [underground facility] operator shall ensure that all stakes used in markouts shall be:

1.-5. (No change.)

Recodify existing (n)-(o) as **(o)-(p)** (No change in text.)

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)-(c) (No change.)

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)-(c) (No change.)

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] **pursuant to** N.J.A.C. 14:2-5.4 or an outside dimension markout [under] **pursuant to** N.J.A.C. 14:2-5.5.

(b)-(g) (No change.)

(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.

SUBCHAPTER 6. VIOLATIONS, PENALTIES, ENFORCEMENT

14:2-6.2 Penalty amounts

(a) Except as provided [under] **pursuant to** (b) below, an [underground facility] operator, an excavator, or the One-Call System operator, that violates any provision of this chapter, the Underground Facility Protection Act, or an order adopted pursuant thereto, shall be liable to a penalty of not less than \$1,000 and not more than \$2,500 per day for each day the violation continues, except that the maximum civil penalty shall not exceed \$25,000 for any related series of violations.

(b)-(e) (No change.)

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

(a) (No change.)

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

(c)-(e) (No change.)

14:2-6.9 Actions in Superior Court

(a)-(b) (No change.)

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

(d) (No change.)