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**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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## NOTICE<sup>1</sup>

**IN THE MATTER OF THE PROPOSED RE-ADOPTION WITH SUBSTANTIAL CHANGES OF  
N.J.A.C. 14:2 – ONE CALL RULES**

**[Docket No. EX20090613](#)**

**Stakeholder Meeting**

**June 28, 2021 from 10:00 a.m. to 12:00 p.m.**

**Virtual Format via Zoom**

**[https://zoom.us/webinar/register/WN\\_jgXsvjJ7RzWuuHZNCMwQhQ](https://zoom.us/webinar/register/WN_jgXsvjJ7RzWuuHZNCMwQhQ)**

Pursuant to the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., the New Jersey Board of Public Utilities (NJBPU or Board) offers this Notice of a virtual stakeholder meeting to solicit input from the public and interested parties on the draft proposed re-adoption with substantial changes of rules at N.J.A.C. 14:2, et seq., which governs the One Call Damage Prevention System. The rules are set to expire on February 11, 2022. Attached to this Notice is a draft of Staff's proposed amendments and requests for recommendations to assist in updating the One Call rules effectively and fairly for all stakeholders.

**The deadline for comments on this matter is 5.00 p.m. on July 27, 2021.** Please submit comments directly to the specific docket listed above using the "Post Comments" button on the Board's [Public Document Search](#) tool. Comments are considered "public documents" for purposes of the State's Open Public Records Act and any confidential information should be submitted in accordance with the procedures set forth in N.J.A.C. 14:1-12.3. Comments may also be submitted electronically to [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov) in PDF or Word format with the specific docket number referenced in the subject line.

A handwritten signature in blue ink that reads "Aida Camacho-Welch".

Aida Camacho-Welch  
Secretary of the Board

Dated: June 15, 2021

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<sup>1</sup>Not a Paid Legal Advertisement.

## **Draft Proposed Readoption with Substantial Changes N.J.A.C. 14:2 The Underground Facility Protection Act**

### **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, underground facility operators, excavators, and responsible contractors, found at N.J.A.C. 14:2, with substantial changes. In accordance with N.J.S.A. 52:14B-5.1(b), the current rules will expire on February 11, 2022, and are being amended at this time, in accord with the Appellate Division decision In re adoption of N.J.A.C. 14:2, A-3913-14T2, 2017 N.J. Super. Unpub. LEXIS 2095, at \*14 (App. Div. Aug. 18, 2017).

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 of Public Utilities 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"); see also 49 U.S.C. § 6103(a) (setting minimum standards for a State one-call notification program and requiring "appropriate participation by all underground facility operators"). 49 U.S.C. § 60134 also encourages states to eliminate exemptions to the one-call program "to municipalities, State agencies, or their contractors." See also 49 U.S.C. § 6103(a)(2). While federal code defines a "pipeline facility" as a "gas pipeline facility and a hazardous liquid pipeline facility," 49 U.S.C. § 60101, the New Jersey Legislature did not distinguish between different facility operators in N.J.S.A. 48:2-74 and N.J.S.A. 48:2-75. The UFPA includes all operators of underground facilities, and its equal treatment of stakeholders creates a strong and effective program.

The rules proposed for readoption are summarized below. The rules adopted February 11, 2015 were adopted 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 ninety (90) days. Alternatively, the BPU could amend N.J.A.C. 14:2-4.2(c). Board Staff has responded to the appellate court's decision with a rulemaking, beginning with a pre-proposal process in accordance with N.J.S.A. 52:14B-4(e). Several stakeholder meetings were included in the pre-proposal process to fully address possible amendments to 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 to 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' in subsection (d)(1), which relates to the application of the rules to particular homeowners, is proposed to be omitted.

N.J.A.C. 14:2-1.2 contains definitions of words and terms used throughout the chapter. 'Excavate' has been changed to match the UFPA's statutory definition. 'One Call Incident' Threshold for property damage has been increased from \$5,000 to \$50,000. This amount is consistent with federal regulations. The term 'Underground facility operator' has been changed to 'Operator.' Lastly, definitions for 'LiDAR' and 'Service line' have 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 underground facility 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. 'Emergency notifications shall only be valid for the duration of the emergency,' has been added under proposed subsection (e), which relates to the timing requirements for emergency excavations and demolitions.

N.J.A.C. 14:2-3.2 provides the contents and perimeter marking requirements of the notice of intent to excavate. The requirement to provide an on-site emergency contact phone number has been added under subsection (b)(1). The Board is proposing under subsection (b)(6)(ii) that the excavator utilize GPS coordinates on large parcels of land in conjunction with white paint, among other methods identified under subsection (b)(6), as is necessary to ensure that the underground facility operator can accurately identify the site.

N.J.A.C. 14:2-3.3 provides the on-site duties and requirements for excavators. Proposed subsection (a)(3) would include the statutory requirement that the excavator or responsible contractor not operate any mechanized equipment within two feet horizontally of the outside wall of the marked underground facility, as derived from N.J.S.A. 48:2-82(d)(1). Additionally, requirements for excavators to show Board staff identification and a copy of the One-Call notification upon request have been added.

N.J.A.C. 14:2-3.4 provides the responsible contractor duties and requirements. The Board is proposing no changes.

N.J.A.C. 14:2-3.5 provides the requirements for excavation or demolition in response to an emergency. The Board clarifies under proposed subsection (g) that emergency notifications shall only be valid for the duration of the emergency, in accordance with N.J.A.C. 14:2-3.1(b).

N.J.A.C. 14:2-3.6 provides the incident and damage reporting requirements for excavators. The word ‘other’ has been removed from N.J.A.C. 14:2-3.6(d)(2).

#### **Subchapter 4. Underground Facility Operators**

N.J.A.C. 14:2-4.1 provides the criteria for applicability to underground facility operators. Language is proposed under 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 underground facility 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. Language in proposed subsection (b) has been added which bars 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 by 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, under proposed subsection (c), an operator would be liable for any costs, labor, parts, equipment, and personnel downtime, which 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 shall be mandatory for all underground facility operators. The term ‘[c]ontrol(s) the operation of’ has been added for clarification in what was formerly (b)(1), (b)(2), and (c), and is now (d)(1), (d)(2), and (e), respectively. Lastly, a requirement for operators to notify the excavator’s onsite emergency contact that a locator has been dispatched to the site of an emergency locate request has been added.

Pursuant to the Appellate Division’s decision in In re Readoption of N.J.A.C. 14:2, No. A-3913-14T2 (App. Div. Aug. 18, 2017), the Board proposed an amendment to N.J.A.C. 14:2-4.2(c). Prior to the current rulemaking proposal, N.J.A.C. 14:2-4.2 required underground facility operators to mark out any underground facilities on the site of a proposed excavation if the operators own, operate, or control those facilities. The former 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 in former 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 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 in 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. In response, Board Staff notes that with the exception of large industrial properties, electric, gas, and telecommunications companies perform markouts despite any issues of access. However, to prevent such issues, the Board is proposing additional requirements for markout requests under N.J.A.C. 14:2-3.2 to improve communications between the operator and the excavator, which would alleviate issues of access.

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 mark-out requirements in 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 mark-out 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 mark-out requirements in N.J.A.C. 14:2-4.2(c) would lead to harmful impacts to all other stakeholder groups, such as excavation companies, utilities, and homeowners, because damage to underground facilities, such as water and wastewater facilities, would adversely impact public safety, as the New Jersey Legislature determined in 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; see also 49 U.S.C. § 6103(a) (imposing minimum standards for a one-call notification program, which "shall provide for appropriate participation by all underground facility operators"); 49 U.S.C. § 60114(a)(3). In considering the appellants' and stakeholders' comments, the Board proposes to amend the "deemed to control" language in former N.J.A.C. 14:2-4.2(c) to "deemed to control the operation of" in proposed N.J.A.C. 14:2-4.2(e), which is reflected within the statutory definition of "operator" under N.J.S.A. 48:2-75. The proposed readoption with substantial changes aligns the former N.J.A.C. 14:2-4.2(c) with the statutory definition of "operator" in the UFPA and thus 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. N.J.S.A. 48:2-74; N.J.S.A. 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 underground facility operators. Requirements for photographic records of the markouts have been added.

N.J.A.C. 14:2-4.4 provides requirements for underground facility operators in reporting and responding to accidents and emergencies. Pursuant to proposed subsection (b)(1), if an underground facility operator receives a report of an accident or emergency, the operator would be required to contact the onsite emergency contact and provide an estimated time of arrival, in addition to dispatching appropriate personnel to the site to assist in locating and protecting the underground facilities. Additionally, the Board proposes requirements for operators to use LiDAR to preserve the scene of a reportable One-Call incident when damage to an underground facility amounts to at least \$100,000 in property damages or causes bodily injury. Furthermore, 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 C.F.R. § 190.203(e) has been added in regard to the obstruction of inspections and investigations without good cause in proposed subsection (h). As noted in proposed subsection (j), all damages to facilities would be required to be reported bi-weekly, not just those that involve natural gas or hazardous liquids.

### **Subchapter 5. Markouts**

N.J.A.C. 14:2-5.1 provides general markout provisions. Back-flagging and marking newly installed facilities have been added to the marking requirements; through these changes, an excavator must be notified about the newly installed facilities if there is a valid notice of intent to excavate in the scope of the work area where the facilities have been installed. The Board would require operators to notify excavators about the newly installed facilities 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. Requirements for information printed on flags have been updated.

N.J.A.C. 14:2-5.3 sets forth the four types of markouts. The Board is proposing no changes.

N.J.A.C. 14:2-5.4 provides requirements for centerline markouts. The Board is proposing no changes.

N.J.A.C. 14:2-5.5 provides requirements for outside dimension markouts. The Board is proposing no changes.

N.J.A.C. 14:2-5.6 provides requirements for offset markouts. The Board is proposing no changes.

### **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. The Board is proposing no changes.

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. The Board is proposing no changes.

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. The Board is proposing no changes.

N.J.A.C. 14:2-6.4 provides the requirements for notices of probable violation to an alleged violator. The Board is proposing no changes.

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 has been added to subsection (b) to improve clarity. Namely, in submitting its Answering Certification to the Board, the alleged violator would 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. The Board is proposing no changes.

N.J.A.C. 14:2-6.7 sets forth notice of administrative order and civil administrative penalty assessment requirements. The Board is proposing no changes.

N.J.A.C. 14:2-6.8 sets forth adjudicatory hearing requirements. The Board is proposing no changes.

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 underground facility operator may institute in Superior Court for injunctive relief. The Board is proposing no changes.

N.J.A.C. 14:2-6.10 provides the basis for criminal prosecution for violations of this chapter. The Board is proposing no changes.

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 maintaining the flow of information among excavators, underground facility operators, and Board staff, so as 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 underground facility 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 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 underground facility 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 underground facility 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**

Federal Standards Statement Executive Order No. 27 (1994) and N.J.S.A. 52:14B-22 through 24 require 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. These rules 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 proposed readoption does 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.

## **Regulatory Flexibility Analysis**

The rules proposed for readoption 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 underground facility operators. Although it is impossible to determine specific numbers, most excavators and responsible contractors, and many underground facility 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 underground facility 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 underground facility 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 underground facility operators to ensure that the regulated community understands the rules and to make compliance as easy as possible. Neither these rules, nor the Underground Facility Protection Act, 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 will have no impact on affordable 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 underground facilities operators performing excavation or demolition.

## **Smart Growth Development Impact Analysis**



The Board anticipates that the rules proposed for readoption 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 pertain to the regulation of underground facilities operators performing excavation or demolition.

### **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.

**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

##### N.J.A.C. 14:2-1.1 (2014)

##### § 14:2-1.1 Scope and applicability

(a)-(c) (No change.)

(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. (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.

"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;]

**"Excavate" or "excavating" 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, 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;**

[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.]

"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.

**“LiDAR” means an optical sensing technology used to determine the position, velocity, or other characteristics of distant objects by analysis of pulsed laser light reflected from their surfaces.**

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

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

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

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

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

"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] **50,000**;
6. Damage to the property of the underground facility operator, which materially affects electric, as, water or wastewater service to the public;
7. A major disruption of traffic, business, media operations, transportation, or any other vital communication or public service;
8. A significant environmental impact;
9. An event that attracts the presence of media personnel at the event, or that attracts telephone or other contact from media personnel at the time of the event; or

10. Any other occurrence similar to those at 1 through 9 above, which has a significant impact on community or public safety functions.

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

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

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

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

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

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

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

"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.

**"Service line" means a distribution line that transports commodity from a common source of supply to an individual customer, or to multiple residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the meter or at the connection to a customer's piping, whichever is further downstream.**

"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 t]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).

## 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 or 1-800-272-1000 for out of state callers** [or 811].

(b)-(c) (No change.)

### § 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 year of a System operator's term, t]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 NJ Treasury guidelines**. In choosing a System operator, the Board shall select the applicant that will best operate the system to achieve the purposes of the Underground Facility Protection Act, in accordance with N.J.S.A. 52:34-12 and N.J.A.C. 17:12.

(e) (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 **in New Jersey** [or], **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 **the** [any] 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 (a) above.

(d) (No change.)

**(e) Emergency notifications shall only be valid for the duration of the emergency.**

([e]f) 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]g) 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]g)1 through 3 below. Instead, such an excavation may be started immediately after notice to the One-Call center.

1.-3. (No change.)

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

1.-4. (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 an on-site emergency contact phone number;**

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

i. [The n]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. The street address of the site;

**ii. On large parcels of land where white paint is used, GPS coordinates, in decimal degrees;**

[ii]iii. The block and lot of the site; and/or

[iii]iv. A description of any white perimeter markings the excavator has made in accordance with (c) below.

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

#### § 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;

2[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

**3. 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;**

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 to board staff upon request; and**

**6. Provide a 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]f);

2.-3. (No change.)

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

(c) (No change.)

§ 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 duration of the emergency, in accordance with 14:2-3.1(b).**

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

(a)-(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. An underground facility that is, in the excavator's judgment, buried at a depth that is insufficient for safety; or

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 (a) or (b) above.

(e) (No change.)

#### SUBCHAPTER 4. UNDERGROUND FACILITY OPERATORS

§ 14:2-4.1 Applicability

(a) (No change.)

(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. **This includes, but is not limited to: location of the meter and curb shutoff, closest building penetration to the water meter, location of service connection to the main, diameter of the facility, composition of the facility, company service records and any additional company records that may assist the excavator in locating the lines.**

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

§ 14:2-4.2 Underground facility operators -- basic requirements

(a) (No change.)

**(b) If an underground facility 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 or responsible contractor's failure to notify the operator because the facility 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) Any underground facilities 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 underground facility operator.**

**([b]d)** Within three business days after receiving information from the 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 N.J.A.C. 14:2-5, except if a facility is exempt from markout requirements under 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]e)** For the purposes of (b) above, an underground facility operator shall be deemed to control **the operation of** 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]f)** 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]g)** If an underground facility operator receives a request from the One-Call center for an emergency markout, the underground facility operator shall:

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

2. (No change.)

**([f]h)** The requirements at (e) 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 underground facility operator's facilities are involved in the emergency or not.

§ 14:2-4.3 Underground facility operators -- markout records

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

(c) In addition to the markout record required under (a) above, an underground facility operator **shall**[may choose to] make and maintain a visual record of the markout using photography and [or]other visual documentation. [If the underground facility operator chooses to make a photographic record, t]The record [should] **shall**:

1. Be made in color;
2. Show the entire markout;
3. Show landmarks in the vicinity of the markout in sufficient detail to enable a person to easily establish the location of the markout;
4. Be emblazoned with an automatic date or time stamp at the time the record is made; **and**
- 5. Include the name of company personnel who made the photographic record.**

(d) An underground facility operator shall submit any records required under this section to the Board upon request, on paper or electronically, **in its bi-weekly hits report or** as directed by the Board or Board staff.

#### § 14:2-4.4 Underground facility operators -- accidents and emergencies

(a) An underground facility operator shall ensure that employees who are qualified to accept and respond to reports of accidents, damage and emergencies **involving** [that involve its] underground facilities, are available at all times of 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 (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 hours] after learning of the emergency:

1. Dispatch appropriate personnel to the site to assist in locating and protecting underground facilities, **as well as calling the emergency onsite contact to provide an estimated time of arrival;** and

2. (No change.)

(c) (No change.)

(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, ]and **via email** shall [verbally] provide the location and a brief description of the incident.

**(e) An underground facility operator will use LiDAR to record the scene of a One-Call incident when damage to an underground facility results in property damage amounting to \$100,000 or more or causes bodily injury, or as requested by Board staff.**

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

(g) [(f)] 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 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 operator 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](http://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 **bi-weekly period**[quarter] shall submit a "hits report," including all damage occurring to its facilities during that [quarter]**period. Damages to all facilities that fit the definition of an underground facility shall be reported.** [No quarterly report is required from an underground facility operator that has had no damage to its facilities during that quarter;]

2. (No change.)

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

[(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 r]Reports and records may be submitted to the Board on paper or electronically, except where another method is required under 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 N.J.A.C. [14:2-2.1(b)] 14:2-4.2(b) to mark out a site, the underground facility operator shall perform the markout in accordance with this subchapter.

(b)-(c) (No change.)

**(d) All newly installed facilities 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 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.**

### § 14:2-5.2 Specifications for marks used in markouts

(a)-(j) (No change.)

(k) 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](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) 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[; and], **the underground facility operator's phone number, the telephone number of the New Jersey One-Call Damage Prevention System Operator (811 or 1-800-272-1000), and the current web address (URL) of the One Call Damage Prevention System Operator; and**

(m)-(o) (No change.)

## SUBCHAPTER 6. VIOLATIONS, PENALTIES, ENFORCEMENT

### § 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** [violator].

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