

TITLE XXXIV

PUBLIC UTILITIES

CHAPTER 374

GENERAL REGULATIONS

Underground Facility Damage Prevention System

Section 374:48

374:48 Definitions. – In this subdivision:

I. "Commission" means the public utilities commission.

II. [Repealed.]

III. "Excavate", "excavating", or "excavation" means any operation conducted on private property or in a public way, right-of-way, easement, public street, or other public place, 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, trenching, tunneling, scraping, tree and root removal, cable or pipe plowing, fence or sign post installation, pile driving, wrecking, razing, rending, or moving any structure or mass material, but does not include the tilling of soil for agricultural purposes, landscaping and maintenance of residential property performed with non-mechanized equipment, landscaping activities performed with mechanized equipment that are intended to cut vegetation, including lawn edging, aeration, and de-thatching, excavations permitted or grandfathered under RSA 155-E, or replacement of department-of-transportation-installed delineator posts in the same location.

IV. "Excavator" means any person performing excavation.

IV-a. "Operator" means any public utility as defined by RSA 362:2 or RSA 362:4, any cable television system as defined by RSA 53-C:1, and any liquefied petroleum gas company operating any jurisdictional facility or facilities as defined by the Natural Gas Pipeline Safety Act (49 U.S.C. chapter 601) that owns or operates underground facilities.

V. "Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, United States government or any agency thereof, political subdivision of the state, or any interstate body.

VI. "System" means the underground facility damage prevention system referred to in RSA 374:49.

VII. "Underground facility" or "facility" means any property which is buried, placed below ground, or submerged on a public way, private property, right-of-way, easement, public street, or other public place and is being used or will be used for the conveyance of cable television, electricity, gas, sewerage, steam, telecommunications, or water.

VIII. "Blasting" means excavation by means of explosives.

Source. 1983, 294:1. 1997, 298:3-5, 15. 1999, 289:13. 2001, 186:1, 2. 2007, 25:4, 5, eff. May 11, 2007. 2010, 191:3, eff. Aug. 20, 2010.

Section 374:49

374:49 Damage Prevention System. – Each operator shall participate in an underground facility damage prevention system. The system shall operate during regular business hours throughout the year, except Saturdays, Sundays and legal holidays. The system shall receive notices of proposed excavations and transmit such notices to its members.

Source. 1983, 294:1. 1997, 298:6, eff. June 20, 1997. 2010, 191:3, eff. Aug. 20, 2010.

Section 374:50

374:50 Rulemaking. – The commission shall adopt rules, pursuant to RSA 541-A, relative to:

- I. Minimum requirements for the operation of the system, including notification procedures.
- II. Procedures for the investigation of complaints relating to this subdivision.
- III. Emergency situations for which prior notice of excavation pursuant to RSA 374:51, II is not required.

Source. 1983, 294:1. 2007, 25:6, eff. May 11, 2007.

Section 374:51

374:51 Notification by Excavator. –

- I. No person shall perform an excavation within 100 feet of an underground facility, except in an emergency, without first giving notification as required by this section. In an emergency, notification shall be given at the earliest practicable moment.
- II. At least 72 hours before a proposed excavation, but not including Saturdays, Sundays and legal holidays, each person required to give notice of an excavation shall notify the damage prevention system referred to in RSA 374:49. Such notice shall occur no more than 30 days before the proposed excavation is to be made.
- III. Notice may be in writing, by telephone or by any other reasonable means.
- IV. Prior to complying with the notification requirements of paragraph II, an excavator must premark the area as provided in this paragraph, which means identifying the perimeter of the proposed site of the excavation by marking the perimeter in an appropriate manner in the color white paint, stakes, or other suitable white markings on non-paved surfaces. No such premarking shall be acceptable if the marks interfere with traffic or pedestrian control, or are misleading to the general public. Premarking shall not be required on any continuous excavation that is over 100 feet in length, or any pole replacement that is within 5 feet of an existing location. If an excavation is over 100 feet in length or a pole replacement is within 5 feet of an existing location, the excavator shall communicate the perimeter of the excavation by means of a description of the area or construction plans, or have an on-site meeting with affected operators or other suitable means acceptable to the parties.

V. When making the notification required by this section, the excavator shall identify which of the methods described in paragraph IV will be used to identify the proposed excavation.

VI. The excavator's notification shall be valid for 30 calendar days from the date and time of confirmation of notification by the underground facility damage prevention system.

VII. If an excavator is aware that blasting will be required during an excavation, the excavator shall inform the damage prevention system when providing notice of the excavation. If an excavator determines during the effective term of the excavator's notification that blasting is required within the area premarked in accordance with paragraph IV, the excavator shall notify the damage prevention system of the need to blast. Notification shall be made at least 24 hours prior to any blasting, not including Saturdays, Sundays, and legal holidays. In the case of unanticipated obstructions that prevent further excavation without blasting, the excavator shall provide separate notice of such blasting not less than 4 contiguous hours in advance of such blasting, not including the hours of 4:00 p.m. to 6:00 a.m. weekdays, or all of Saturdays, Sundays, and legal holidays.

Source. 1983, 294:1. 1997, 298:7, 8. 1999, 289:14. 2001, 186:3. 2007, 25:7, 8, eff. May 11, 2007. 2010, 191:3, eff. Aug. 20, 2010.

Section 374:52

374:52 Notification by System. – Upon receipt of notice of a proposed excavation, the system shall notify all affected members.

Source. 1983, 294:1. 1997, 298:9, eff. June 20, 1997

Section 374:53

374:53 Response by Operator. – Within 72 hours after receipt of notice from a proposed excavator or from the system of a proposed excavation, but not including Saturdays, Sundays, and legal holidays, an operator shall mark the location of its underground facilities in the area of the proposed excavation. An operator and an excavator may by agreement fix a later time for the operator's marking of its facilities. Once an operator has marked the location of its facilities in the area of an excavation, the excavator shall be responsible for maintaining the markings. An operator who participates in an underground facility damage prevention system shall not be required to locate underground facilities not owned by the operator; underground facilities which the owner shall not be required to locate may include, but shall not be limited to, facilities running from a house to a garage or other outbuilding.

Source. 1983, 294:1. 1997, 298:10. 2001, 186:4, eff. Jan. 1, 2002. 2010, 191:3, eff. Aug. 20, 2010.

Section 374:54

374:54 Notice of Damage. – When any underground facility is damaged, the excavator causing the damage shall immediately notify the affected operator. The excavation shall not be backfilled without first receiving permission from the operator whose facility was damaged.

Source. 1983, 294:1. 1997, 298:11, eff. June 20, 1997.

Section 374:55

374:55 Civil Penalty. –

I. Proof that an excavation has been made without compliance with the notice requirement of RSA 374:51 and that damage to an underground facility has occurred shall be prima facie evidence in any court or administrative proceeding that the damage was caused by the negligence of the excavator.

II. Any excavator who does not give notice of or identify the proposed excavation area as required by RSA 374:51 or rules of the commission regarding tolerance zones and marking procedures shall be subject to the penalties in paragraph VIII, in addition to any liability for the actual damages.

III. Any operator which does not mark the location of its underground facilities as required by RSA 374:53 or rules of the commission regarding tolerance zones and marking procedures shall be subject to the penalties in paragraph VIII.

IV. If underground facilities are damaged because an operator does not mark its underground facilities as required by RSA 374:53, the operator shall be subject to the penalties in paragraph VIII, liable for damages sustained to its facilities and, in addition, shall be liable for any damages incurred by the excavator as a result of the operator's failure to mark such facilities.

V. If marked underground facilities are damaged, the excavator shall be subject to the penalties in paragraph VIII and liable for the cost of repairs for the damage.

VI. Any excavator who damages an underground facility and fails to notify the operator, or backfills the excavation without receiving permission, as required by RSA 374:54, shall be subject to the penalties in paragraph VIII.

VII. The commission or any commission employee, involved in an underground facility damage prevention program approved by the commission and designated by the commission, may enforce violations of this subdivision. Any excavator or operator that violates this subdivision shall be subject to the penalties in paragraph VIII. In addition, the commission may assess the excavator for expenditures made to collect the civil penalty. Any excavator or operator which suffers damage resulting from violation of this subdivision may petition the commission to initiate an enforcement action.

VIII. Any excavator or operator that does not comply with RSA 374:51 through 374:54 shall be required either to complete an underground facility damage prevention program approved by the commission, or to pay a civil penalty of up to \$500. The civil penalty may be up to \$5,000 if the excavator or operator previously violated RSA 374:51 through 374:54 within the prior 12 months or if the violation results in bodily injury or property damages exceeding \$50,000, excluding utility costs. This paragraph shall not apply to a homeowner excavating on his or her own property or to a legal occupant of residential property excavating on the property of his or her primary residence with the permission of the owner.

Source. 1983, 294:1. 1997, 298:13, eff. June 20, 1997

Section 374:56

374:56 Injunctions. – If any person is making or proposes to make an excavation in a negligent or unsafe manner which may result in damage to an underground facility, the operator which owns or maintains such facility may commence an action for a temporary restraining order or injunction to prevent the excavation.

Source. 1983, 294:1. 1987, 72:1. 1990, 98:1, 2. 1991, 151:1. 1997, 298:12. 1999, 289:15. 2001, 186:5, eff. Jan. 1, 2002. 2010, 191:2, eff. Aug. 20, 2010.