



ST. MARY'S COUNTY METROPOLITAN COMMISSION

STANDARD PROCEDURES & POLICIES

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SUBJECT: UNDERGROUND FACILITY DAMAGE

PURPOSE

From time to time, Metropolitan water or sewer facilities are damaged by contractors. Prior to excavation, contractors are required to contact Miss Utility. The contractor is to supervise the on-site activity and assumes all liability if damage should occur to an underground facility. This procedure does not apply to an excavation not more than 6 inches in depth or demolition performed or to be performed by an owner or lessee of a private residence when the excavation or demolition is performed or to be performed: (1) entirely on the land on which the private residence of the owner or lessee is located; and (2) without the use of machinery.

Once a site has been marked or cleared by the Miss Utility, contractors are required to carefully “hand” dig around the marked lines without utilizing *mechanized/electric/power equipment within* 18 inches of the marked lines (Maryland requirement).

If the utility is not found, contractors shall not excavate within 20 feet (*in all directions*) of the marked lines until the utility has been located and/or a remarking is requested.

DEFINITIONS

“Underground facility” means personal property that is buried or submerged for: (i) use in connection with the storage or conveyance of water, sewage, oil, gas, or other substances; or (ii) transmission or conveyance of electronic, telephonic, or telegraphic communications or electricity. (2) “Underground facility” includes pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those portions of poles below ground. (3) “Underground facility” does not include a stormwater drain.

“Damage” means any excavation activity that results in the need to repair any underground facility due to a weakening and/or the partial or complete destruction of the facility, including but not limited to the protective coating, lateral support, cathodic protection, and housing for the underground facility.

AUTHORITY

The Maryland Underground Facilities Damage Prevention Authority (“The Authority”) was created by the Maryland General Assembly in 2010 to enforce the Miss Utility Law (Annotated Code of MD, Public Utilities, Title 12). This legislation was required by actions taken by the federal government which ordered all states and U.S. territories to create a One-Call Compliance Program. The Authority seeks to protect all underground facilities of owners in the State of Maryland from destruction, damage or dislocation in order to prevent death or injury to individuals; property damage to private and public property; and the loss of services provided to the general public. There is no mandatory reporting of damages in Maryland.

A person, firm or corporation may not tamper with, deface, damage or obstruct any fire hydrant, sewer or water meter, etc. St. Mary’s County Code Chapter 113-21. A. Unless otherwise provided, any act or omission designated as a misdemeanor is punishable by a fine of not more than one hundred dollars (\$100.00). 113-21.B(3) states that for civil infractions, a preset fine, not to exceed one hundred dollars (\$100.00), may be imposed for each violation. 113-21.C(2)(f) states: the Commission may utilize administrative enforcement remedies that may include an administrative fine not to exceed one thousand dollars (\$1,000.00) per violation, per day.

GUIDELINES

- (1) A person that performs an excavation or demolition without first providing the required notice or does not follow Miss Utility Guidelines and damages, dislocates, or disturbs any underground facility is deemed negligent and is subject to reimbursing the Commission for the cost of damages. The charges may be calculated considering the seriousness of the violation, the intent and good faith of the violator, and the past history of violations.
- (2) In lieu of processing an action (*by filing a Notice of Probable Violation*) to recover a civil penalty through the Authority, the Commission may assess a minimum response charge of **\$1,000** (this is based on the estimated cost of our standard initial response, which includes the initial call, dispatching, damage assessment, equipment use and mobilization of MetCom staff plus overhead – it is not a penalty or administrative remedy than can also be assessed. In determining the total

charge, the Director may also seek reimbursement from the damager for actual time and material costs current incurred as described Process paragraphs 1 and 2, below.

- (3) If a subsequent offense occurs and the earlier offense is unresolved, regardless of the age of the earlier offense, per St. Mary's County Code Chapter 113-14.G. If any charges remain unpaid for a period of thirty (30) days after the due date for payment, a late charge at a rate not to exceed one and five-tenths (1- 5/10) percent per month.
- (4) Test pits should be performed as a part of the design process to help preclude the potential for damage in the field.

PROCESS

- (1) **Establishment of Negligence** on the part of the damager. The Director / Chief of Facilities & Operations (*with assistance from the Risk Manager as may be necessary*) needs to ensure the Commission has conclusive proof that the damager's negligence was the cause of the damage to the underground facility or property. An investigation must be performed at the damage site and should include photos, written statements and all critical documentation. One noteworthy example of conclusive proof would be the lack of a valid Maryland State one-call (*Miss Utility*) dig ticket. Without establishing clear negligence it would be inappropriate to include loss of use damages.
 - a. Once the incident is identified as a negligent or potentially negligent damage to a MetCom owned facility, all appropriate personnel will add all time, expenses, equipment costs (at FEMA rates) and any related contractor – incurred costs to the work order.
 - b. A Third (3rd) Party Damage work order category shall be utilized to assist in the tracking of these costs.
 - c. In events of large or widespread outages (*greater than 25 residences or sanitary sewer spills*) there may be additional fines or penalties assessed by the Maryland Department of the Environment. These fines can be assessed months after the original incident. Any such fines will be the responsibility of the damager at that time.
 - d. If the site was cleared by the Miss Utility and subsequent excavation by the contractor resulted in damage to the utility, the contractor would not generally be considered negligent.
- (2) **Calculating the Loss** to be included on the bill to the damager should be fair and reasonable. The penalty for not contacting Miss Utility shall be the maximum allowable under these Guidelines paragraph (2), above. Other inadvertent damages or those deemed to be minor shall be calculated based on actual costs described below. In typical cases, the Commission shall include all labor and material costs, any clean-up / restoration / postings / or fines associated with a sanitary sewer overflow, the cost of the volume of water lost, and the personnel costs to investigate the incident. The Commission may apply overhead / administration charges and interest as a part of the loss calculation as follows:
 - a. After all incident costs are finalized, a copy of the all costs (*work order and any related invoices*) will be transmitted to the Billing office to apply the current overhead calculation and assessment of any further costs incurred by MetCom (administrative costs).

- (3) **Defense and Collection** of the direct damages, fees and loss of use expenses billed. If the loss of use is a fair and reasonable calculated amount, then the chances of collecting 100 percent of the repair expenses are real and the defense of the right to bill and collect loss of use dollars can typically be upheld or defended without contention.
- a. Should the damager fail to pay for losses or otherwise remedy the damages to the satisfaction if the Commission, the Risk Manager will be contacted to file a claim against the damager through the Local Government Insurance Trust (*LGIT*).
 - b. At any time, LGIT or the Commission may file a Notice of Probable Violation with the Maryland Underground Facilities Damage Prevention Authority.
 - c. Depending on the seriousness of the violation, the Commission may also issue a “Stop Work” order or revoke the approval of a Commission issued permit(s).
 - d. Any legal fees reasonably expended by the Commission in the defense and collection process is eligible for reimbursement from the damager.

LOCAL GOVERNMENT INSURANCE TRUST (LGIT)

The above standard operating procedure was reviewed by LGIT on 06/14/2021.