

No. 2004-199

AN ACT

HB 2384

Amending the act of December 10, 1974 (P.L.852, No.287), entitled "An act to protect the public health and safety by preventing excavation or demolition work from damaging underground lines used in providing electricity, communication, gas, oil delivery, oil product delivery, sewage, water or other service; imposing duties upon the providers of such service, recorders of deeds, and persons and other entities preparing drawings or performing excavation or demolition work; and prescribing penalties," further providing for definitions, for duties of facility owners, for duties of a One Call System, for duties of contractors and for fines and penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 1 of the act of December 10, 1974 (P.L.852, No.287), referred to as the Underground Utility Line Protection Law, amended December 19, 1996 (P.L.1460, No.187), is amended to read:

Section 1. As used in this act:

"Consumer Price Index" means the index of consumer prices developed and updated by the Bureau of Labor Statistics of the United States Department of Labor.

"Contractor" means any person who or which performs excavation or demolition work for himself or for another person.

"Demolition work" means the partial or complete destruction of a structure, by any means, served by or adjacent to a line or lines.

"Department" means the Department of Labor and Industry of the Commonwealth.

"Designer" means any architect, engineer or other person who or which prepares a drawing for a construction or other project which requires excavation or demolition work as herein defined.

"Emergency" means a sudden or unforeseen occurrence involving a clear and immediate danger to life or property, including, but not limited to, serious breaks or defects in a facility owner's lines.

"Excavation work" means the use of powered equipment or explosives in the movement of earth, rock or other material, and includes but is not limited to anchoring, augering, backfilling, blasting, boring, digging, ditching, drilling, driving-in, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling, but does not include soft excavation technology such as vacuum, high pressure air or water, tilling of soil for agricultural purposes to a depth of less than eighteen inches, operations necessary or incidental to the purposes of finding or extracting natural resources, political subdivisions performing minor routine maintenance up to a depth of less than eighteen inches within the right-of-way of roads or employees of the Department of Transportation performing within the scope of their

employment work up to a depth of twenty-four inches beneath the existing surface within the right-of-way of a State highway.

“Facility owner” means the public utility or agency, political subdivision, municipality, authority, rural electric cooperative or other person or entity who or which owns or operates a line. The term does not include the Department of Transportation within a State highway right-of-way.

“Line” or “facility” means an underground conductor or underground pipe or structure used in providing electric or communication service, or an underground pipe used in carrying or providing gas, oil or oil product, sewage, water or other service to one or more consumers or customers of such service and the appurtenances thereto, regardless of whether such line or structure is located on land owned by a person or public agency or whether it is located within an easement or right-of-way. The term includes storm drainage and traffic loops.

“Minor routine maintenance” means shaping of or adding dust palliative to unpaved roads, removal and application of patches to the surface or base of flexible base, rigid base or rigid surface roads by either manual or mechanized method to the extent of the existing exposed base material, crack and joint sealing, adding dust palliative to road shoulders, patching of shoulders and shoulder bases by either manual or mechanized methods to the extent of the existing exposed base, and cleaning of inlets and drainage pipes and ditches.

“One Call System” means a communication system established within this Commonwealth to provide a single toll-free telephone number for contractors or designers or any other person covered by this act to call facility owners and notify them of their intent to perform excavation, demolition or similar work as defined by this act. A One Call System shall be incorporated and operated as a nonprofit corporation pursuant to 15 Pa.C.S. Pt. II Subpt. C (relating to nonprofit corporations).

“Operator” means any individual in physical control of powered equipment or explosives when being used to perform excavation or demolition work.

“Owner” means any person who or which engages a contractor for construction or any other project which requires excavation or demolition work as herein defined.

“Person” means an individual, partnership, corporation, political subdivision, a municipal authority, the Commonwealth and its agencies and instrumentalities, or any other entity.

“Powered equipment” means any equipment energized by an engine or motor and used in excavation or demolition work.

“Secretary” means the Secretary of Labor and Industry of the Commonwealth.

“Site” means the specific place where excavation or demolition work is being or is planned to be performed.

“Tolerance zone” means the horizontal space within eighteen inches of the outside wall or edge of a line or facility.

“Working day” means any day except a Saturday, Sunday or legal holiday prescribed by act of the General Assembly.

Section 2. Sections 2, 3, 5 and 7.2 of the act, amended December 19, 1996 (P.L.1460, No.187), are amended to read:

Section 2. It shall be the duty of each facility owner:

(1) To be a member of and give written notice to a One Call System. Such notice shall be in a form acceptable to a One Call System and include:

- (i) the legal name of the facility owner;
- (ii) the names of the counties and municipalities, down to and including wards in Philadelphia, Pittsburgh, Allentown and Erie, in which its lines are located;
- (iii) the facility owner’s address (by street, number and political subdivision), and the telephone number and fax number, if available, to which inquiries may be directed as to the location of such lines; and

(iv) at the option of any facility owner, the street identifications, within or outside of the municipality in which its lines are located. This information shall be in a form acceptable to a One Call System and shall include the names of streets bounding, crossing or adjacent to the facility owner’s lines. Upon receipt of a signed street identification list from a facility owner, a One Call System shall provide the facility owner with notification within the boundaries described in the street identification list. All facility owners which opt for this service shall agree to indemnify and hold harmless a One Call System for any street identity errors and omissions on the part of the facility owner or the contractor or designer providing street identifications.

(2) To give to a One Call System like written notice within five working days after any of the matters stated in the last previous notice shall have changed.

(4) Not more than ten working days after receipt of a request therefor from a designer who identifies the site of excavation or demolition work for which he is preparing a drawing, to initially respond to his request for information as to the position and type of the facility owner’s lines at such site based on the information currently in the facility owner’s possession. The facility owner shall so advise the person making the request of the facility owner’s status at the site through a One Call System.

(5) Not more than two working days after receipt of a timely request therefor from a contractor or operator who identifies the site of excavation or demolition work he intends to perform:

- (i) To mark, stake, locate or otherwise provide the position of the facility owner’s underground lines at the site within eighteen inches horizontally from the outside wall of such line in a manner so as to enable the contractor, where appropriate, to employ prudent techniques, which may include hand-dug test holes, to determine the precise position of the underground facility owner’s lines. This shall be done to the extent such information is available

in the facility owner's records or by use of standard locating techniques other than excavation.

(i.1) A facility owner may identify the location of a known facility connected to its facilities, but not owned or operated by the facility owner, as a helpful guide to the excavator or owner. The identification shall not be deemed to impose any liability upon the facility owner for the accuracy of the private facility identification.

(ii) A facility owner, at its option, may timely elect to excavate around its facilities in fulfillment of this subparagraph.

(v) To respond to all notices through a One Call System, provided the request is made in the time frame set forth under this act.

(vi) In marking the approximate position of underground lines or facilities, the facility owner shall follow American Public Works Association and Utility Locating and Coordination Council Temporary Marking Standards. Should the American Public Works Association and Utility Locating and Coordination Council Temporary Marking Standards be amended, the amended standards shall be applied and followed.

(vii) To respond to emergencies as soon as practical following receipt of notification of such emergency.

(8) Operation costs for a One Call System shall be shared, in an equitable manner for services received, by facility owner members as determined by a One Call System's board of directors. Political subdivisions with a population of less than two thousand persons or municipal authorities having an aggregate population in the area served by the municipal authority of less than five thousand persons shall be exempt from payment of any service fee.

(9) If a facility owner fails to become a member of a One Call System in violation of this act and a line or lines of such nonmember facility owner are damaged by a contractor by reason of the contractor's failure to notify the facility owner because the facility owner was not a member of a One Call System serving the location where the damage occurred, such facility owner shall have no right of recovery from the contractor of any costs associated with the damage to its lines. The right herein granted shall not be in limitation of any other rights of the contractor.

(10) To submit an incident report to the department not more than ten working days after receipt of notice that the facility owner's lines have been damaged by excavation or demolition activities that resulted in personal injury or in property damage to parties other than the affected excavator or facility owner. In addition, the incident report may likewise be furnished to the Pennsylvania Public Utility Commission and the Pennsylvania Emergency Management Agency pursuant to memoranda of understanding negotiated between these agencies and the department. The department shall furnish to a One Call System, upon reasonable request, statistical data pertaining to the number of incident reports filed with the department and the type, number and results of investigations for violations of this act.

(11) To comply with all requests for information by the department relating to the department's enforcement authority under this act within thirty days of the receipt of the request.

Section 3. It shall be the duty of a One Call System to do the following:

(1.1) To assign a serial number and log the entire voice transaction on logging recorders in appropriate digital form and maintain these logs for five years. All records shall be indexed and available to the parties involved at a reasonable cost and at reasonable times set by a One Call System.

(1.2) Perform the obligations, as set forth under this section, on behalf of the facility owner, contractor or designer as established by the board of directors of a One Call System.

(1.3) Provide access to municipal lists provided to a One Call System for those interested parties. This list shall contain facility owners having lines in the municipality, including wards as indicated in subclause (ii) of clause (1) of section 2, and to maintain, for each municipality, a list containing the information as required to be submitted by the facility owner. Such list shall be updated as revised information is received from the facility owner within five working days.

(2) To make such lists available for public inspection via the county recorder of deeds without charge. A maximum copy fee of no more than twenty-five dollars (\$25) may be charged per county list. Each facility owner change shall be forwarded, at no charge, to the respective county recorder of deeds for public access. The recorder of deeds shall make such list available for public inspection.

(3) Not more than ten working days after the receipt of a request from the department, to provide access to or photocopies of specific One Call System response records, tickets or other like information relating to matters under investigation by the department pursuant to its enforcement authority under this act.

Section 5. It shall be the duty of each contractor who intends to perform excavation or demolition work within this Commonwealth:

(2.1) To request the location and type of facility owner lines at each site by notifying the facility owner through a One Call System. Notification shall be not less than three nor more than ten working days in advance of beginning excavation or demolition work.

(2.2) To provide a One Call System with specific information to identify the site so that facility owners might provide indications of their lines. A contractor shall be deemed to have met the obligations of clause (2.1) if he calls a One Call System, provides the required information and receives a serial number.

(3) If a contractor intends to perform work at multiple sites or over a large area, he shall take reasonable steps to work with facility owners, including a preconstruction meeting, so that they may locate their facilities at a time reasonably in advance of the actual start of excavation or demolition work for each phase of the work. After commencement of excavation or

demolition work, the contractor shall be responsible for protecting and preserving the staking, marking or other designation until no longer required for proper and safe excavation or demolition work at or near the underground facility, or by calling for an additional relocation in the event that the previous markings have been compromised or eliminated.

(4) To exercise due care; and to take all reasonable steps necessary to avoid injury to or otherwise interfere with all lines where positions have been provided to the contractor by the facility owners pursuant to clause (5) of section 2. Within the tolerance zone or if insufficient information is available pursuant to clause (5) of section 2, the contractor shall employ prudent techniques, which may include hand-dug test holes, to ascertain the precise position of such facilities, which shall be paid for by the owner pursuant to clause (15) of this section.

(5) If the facility owner fails to respond to the contractor's timely request within the two work days as provided under clause (5) of section 2 or the facility owner notifies the contractor that the line cannot be marked within the time frame and a mutually agreeable date for marking cannot be arrived at, the contractor may proceed with excavation at the end of three working days, provided he exercises due care in his endeavors, subject to the limitations contained in this clause and clauses (2.1) through (4).

(6) To inform each operator employed by the contractor at the site of such work of the information obtained by the contractor pursuant to clauses (2.1) through (5), and the contractor and operator shall:

(i) Plan the excavation or demolition to avoid damage to or minimize interference with a facility owner's facilities in the construction area. Excavation or demolition work which requires temporary or permanent interruption of a facility owner's service shall be coordinated with the affected facility owner in all cases.

(ii) After consulting with a facility owner, provide such support and mechanical protection for known facility owner's lines at the construction site during the excavation or demolition work, including during backfilling operations, as may be reasonably necessary for the protection of such lines.

(7) To report immediately to the facility owner any break or leak on its lines, or any dent, gouge, groove or other damage to such lines or to their coating or cathodic protection, made or discovered in the course of the excavation or demolition work.

(8) To alert immediately the occupants of premises as to any emergency that such person may create or discover at or near such premises.

(9) The time requirements of clause (2.1) shall not apply to a facility owner or contractor performing excavation or demolition work in an emergency, as defined in section 1; nonetheless, all facility owners shall be notified as soon as possible before, during or after excavation or demolition, depending upon the circumstances.

(11) A contractor shall use the color white to mark a proposed excavation site when exact site information cannot be provided.

(12) The following standards shall be applied in determining whether a contractor shall incur any obligation or be subject to liability as a result of a contractor's demolition or excavation work damaging a facility owner's facilities:

(i) The contractor who has complied with the terms of this act and who was not otherwise negligent shall not be subject to liability or incur any obligation to facility owners, operators, owners or other persons who sustain injury to person or property as a result of the contractor's excavation or demolition work damaging a facility owner's lines.

(ii) Where a contractor has failed to comply with the terms of this act or was otherwise negligent, and the facility owner or designer has misidentified, mislocated or failed to identify its facilities pursuant to this act, then in computing the amount of reimbursement to which the facility owner is entitled, the cost of repairing or replacing its facilities shall be diminished in the same proportion that the facility owner's or designer's misidentification, mislocation or failure to identify the facilities contributed to the damage. Should the facility owner or designer not have misidentified, mislocated or failed to identify its facilities pursuant to this act, there shall be no diminution of the facility owner's right of recovery.

(13) If, after receiving information from a One Call System or directly from a facility owner, the contractor decides to change the location, scope or duration of a proposed excavation, the obligations imposed by this section shall apply to the new location.

(14) If a contractor removes its equipment and vacates a worksite for more than two working days, he shall renotify a One Call System unless other arrangements have been made directly with the facility owners involved in his worksite.

(15) When the information required from the facility owner under clause [(4)(1)] (5)(i) of section 2 cannot be provided or it is reasonably necessary for the contractor to ascertain the precise location of any line by prudent techniques, which may include hand-dug test holes, vacuum excavation or other similar devices, the contractor shall promptly notify the owner or the owner's representative, either orally or in writing. After giving such notice, the contractor shall be entitled to compensation from the owner for this additional work as provided in the latest edition of the Pennsylvania Department of Transportation Form 408 specifications for extra work performed on a force account basis. The provisions of this subsection shall not be deemed to limit any other rights which the contractor has under its contract with the owner or otherwise. ***Provisions in any contract, public or private, which attempt to limit the rights of contractors under this section shall not be waived for any reason, and any attempted waiver shall be void and unenforceable as against public policy and any such attempted waiver shall be reported to the Department of Labor and Industry.***

(16) ***To submit an incident report to the department not more than ten working days after striking or otherwise damaging a facility owner's line***

during excavation or demolition activities that resulted in personal injury or property damage to parties other than the affected contractor. In addition, the incident report may be furnished to the Pennsylvania Public Utility Commission and the Pennsylvania Emergency Management Agency pursuant to memoranda of understanding negotiated between these agencies and the department.

(17) To comply with all requests for information by the department relating to the department's enforcement authority under this act within thirty days of the receipt of the request.

Section 7.2. (a) Any person violating any of the provisions of this act, except [clause (1) of section 2, shall, upon conviction in a summary proceeding,] *clauses (1) and (2) of section 2, commits a summary offense and shall, upon conviction,* be sentenced to pay a fine of not less than two thousand five hundred dollars (\$2,500) nor more than twenty-five thousand dollars (\$25,000) or undergo imprisonment for not more than ninety days, or both. [A violation of clause (1) of section 2 shall be a civil offense punishable by a fine of not more than five hundred dollars (\$500) per day for each day of the offense.] The Attorney General of the Commonwealth or any district attorney [or magistrate] may enforce the provisions of this act in any court of competent jurisdiction. The [Department of Labor and Industry] *department*, in consultation with the Attorney General, may also enforce the provisions of this act in any court of competent jurisdiction. A facility owner may petition any court of competent jurisdiction to enjoin any excavation or demolition work conducted in violation of this act. [This act does not affect any civil remedies for personal injury or property damage except as otherwise specifically provided for in this act.]

(b) Fines *levied under subsection (a)* shall be determined according to the following schedule:

(1) Where [damages or violations have not exceeded] *violations result in property damage that does not exceed* three thousand dollars (\$3,000), the [civil penalty] *fine* shall not exceed three thousand dollars (\$3,000).

(2) Where violations result in property damage of more than three thousand dollars (\$3,000), [a civil penalty of not more than] *the fine shall not exceed* five thousand dollars (\$5,000).

(3) For violations which result in personal injury or death, [a civil penalty not to] *the fine shall not* exceed twenty-five thousand dollars (\$25,000).

(c) The following factors shall be considered in determining the [civil penalty] *fine* to be assessed:

(1) The degree of the party's compliance with the statute prior to date of the violation.

(2) The amount of *personal and property* damage caused *by the party's noncompliance*.

(3) The degree of threat to the public safety and inconvenience caused *by the party's noncompliance*.

(4) The party's plans and procedures to insure future compliance with statutes and regulations.

(c.1) In addition to any other sanctions provided by this act, the department shall have the authority to issue warnings and orders requiring compliance with this act and may levy administrative penalties for violations of this act. Any warning, order or penalty shall be served on the person or entity violating the act at their last known address. The department shall consider the factors set forth in subsection (c) in determining the administrative penalty to be assessed. Any party aggrieved by the imposition of an order or administrative penalty imposed by the department may appeal such order or penalty as provided in 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to review of Commonwealth agency action).

(c.2) Administrative penalties imposed by the department under subsection (c.1) shall be determined according to the following schedule:

(1) Any person or entity violating the provisions of clauses (1) and (2) of section 2 may be subject to an administrative penalty not to exceed five hundred dollars (\$500) per day. Each day of noncompliance shall constitute a separate violation.

(2) Any person or entity receiving three or more warnings in a calendar year may be subject to an administrative penalty not to exceed five hundred dollars (\$500).

(3) Where violations result in property damage that does not exceed ten thousand dollars (\$10,000), the administrative penalty may not exceed one thousand dollars (\$1,000).

(4) Where violations result in property damage of more than ten thousand dollars (\$10,000), the administrative penalty may not exceed five thousand dollars (\$5,000).

(5) For violations that result in personal injury or death, the administrative penalty may not exceed ten thousand dollars (~~\$10,090~~).

(d) All fines *and penalties* recovered under this section shall be payable to the Attorney General, district attorney[, **magistrate**] or the [**Department of Labor and Industry**] *department*, whichever brought the action, *and collected in the manner provided for by law*. To the extent that the expenses incurred by the [**Department of Labor and Industry**] *department* in enforcing this act exceed the fines collected by the [**Department of Labor and Industry**] *department* under this section, the [**Department of Labor and Industry**] *department* may assess a charge for the remaining reasonable expenses from a One Call System pursuant to a written agreement between the parties.

(e) The provisions of this act shall not affect any civil remedies for personal injury or property damage, except as otherwise specifically provided for in this act.

(f) The secretary or his designee shall have the authority to issue subpoenas, upon application of an attorney responsible for representing the Commonwealth in actions before the department, for the purpose of investigating alleged violations of this act. The department shall have the power to subpoena witnesses and compel the production of books, records, papers and documents as it deems necessary or pertinent to an investigation or hearing.

Section 3. Section 7.5 of the act is repealed.

Section 4. This act shall take effect in 60 days.

APPROVED—The 30th day of November, A.D. 2004.

EDWARD G. RENDELL