

ADDENDUM

TO THE JULY 1, 2023, CHANGES TO THE UNDERGROUND UTILITY DAMAGE PREVENTION ACT

Over the course of 2022, a group of stakeholders, working with the Advisory Committee and the State Corporation Commission, formed Taskforce 2022. The task force was committed to examining the Underground Utility Damage Prevention Act to modify the Law in order to improve damage prevention in Virginia. After months of work, proposed changes to the legislation were submitted to the General Assembly where both houses passed this legislation and the Governor signed these proposals into law effective **July 1, 2023**.

The following addendum serves as an update to the manual and contains all the recent changes and can be printed out to keep with existing manuals for easy reference. Hard copies of the Virginia Professional Excavator's Manual will be updated to include the new law changes, however, the specific timing is still to be determined.

Definitions (*italics indicates new text added to the Law*):

- **Page 54:** *“Commission” means the State Corporation Commission* has been removed.
- **Page 54:** *“Contract Locator” means any person contracted by an operator specifically to determine the approximate horizontal location of the operator’s utility lines that may exist within the area specified by a locate request.*
- **Page 55:** *“Exigent circumstances” means circumstances outside of an operator’s or contract locator’s, as described in subsection D of §56-265.19, control that necessarily prevent an operator or locator from completing the marking task, including a wrong address provided with the locate request; failure to provide a reasonably specific location of propose excavation; inaccessibility of the excavation site due to physical barrier or risk of serious bodily injury; a locate request that cannot be carried out by a traditional locating method and requires assistance form the operator; catastrophic technological failure outside of the locator’s, operator’s, or notification center’s control; or the area of excavation does not conform with the requirements of subsection F of §56-265.17.”*
- **Page 55:** *“Locate request” means the completed delivery of information to the notification center requesting markings for a specified area of excavation or demolition and receipt of the same by the notification center in accordance with this chapter.*
- **Page 55:** Under definition of “Notification center,” *“teletype, telecopy, personal computer, or telephone”* has been replaced with *“electronic means.”*
- **Page 55:** *“Positive response” means a code or phrase posted by an operator or locator to the notification center detailing the marking status of a locate request.”*
- **Page 55:** *“Positive response system” means the excavator-operator information exchange system that is required by subsection E of §56-265.16:1 and provides the means for operators or their contract locators to responds to and report the marking status of a locate request.”*
- **Page 56:** *“Special project notice”* means a valid notice to the notification center by an excavator covering a specific, unique or long-term project” has been removed – Special Project Tickets are no longer allowed.

§56-265.17. Notification required prior to excavation or demolition; waiting periods; marking of proposed site.

- **Page 58: B 1 and B 2 have been removed.** B 1 is now: *"After the excavator has confirmed, by reviewing the positive response information posted on the notification center's positive response system, that each operator has marked its utility lines, notified the notification center that its utility lines are not present in the area of proposed excavation, or otherwise posted a positive response indicating excavation may begin; or"*
- **B 3 is now B 2**
- **Page 59: C is now:** *"If, after at least 48 hours beginning with 7:00 a.m. the next working day following a locate request or on the date of excavation, the excavator, upon arrival at the site of a proposed excavation, observes clear evidence of the presence of an unmarked utility line in the area of the proposed excavation, the excavator shall not begin excavating until three hours after an additional contact is made to the notification center for the area, provided that no information has been posted to the positive response system or information posted to the positive response system is inconsistent with the clear evidence observed by the excavator. The operator of any unmarked utility line shall respond within three hours of the excavator's contact to the notification center. After the clear evidence of an unmarked utility line is addressed pursuant to the additional contact to the notification center, excavation may proceed. During any excavation subject to this subsection, the excavator shall exercise reasonable care at all times to protect underground utility lines and shall be liable for any damages."*
- **Page 59: D is now:** *"The excavator's notification shall be valid for 15 working days from 7:00 a.m. on the next working day following a locate request or 15 working days following a scheduled excavation date provided to the notification center, whichever is later. Three working days before the end of the 15 working-day period, or at any time when line-location markings on the ground become illegible, the excavator intending to excavate shall contact the notification center and request the re-marking of lines. The operator shall re-mark the lines as soon as possible; however, the re-marking of the lines shall be completed within 48 hours from 7:00 a.m. on the next working day following the request of the re-mark. Such re-marking shall be valid for an additional 15 working days from 7:00 a.m. on the next working day following a locate request."*
- **Page 59: F is now:** *"The extent of the excavator's proposed excavation or demolition shall be a work area that can be excavated with 15 working days from 7:00 a.m. on the next working day following a locate request. The area covered under each locate request shall not exceed one-third of a mile."*
- **Page 59: G has been removed** – Special Project Tickets are no longer a ticket type

§56-265.19. Duties of operators; regulations.

- **Page 61: A is now:** “If a proposed excavation or demolition is planned in such proximity to the underground utility line that the utility line may be destroyed, damaged, dislocated, or disturbed, the operator shall mark the approximate horizontal location of the underground utility line on the ground to within two feet of either side of the underground utility line by means of stakes, paint, flags, or a combination thereof. The operator *or contract locator* shall mark the underground utility line and report the marking status to the *positive response* system by no later than 7:00 a.m. on the third working day following the excavator’s *locate request*, unless *a scheduled excavation date is provided by the excavator to the notification center* or the operator *or contract locator* is unable to do so due to extraordinary *or exigent* circumstances. *Any scheduled excavation date shall not be less than 48 hours nor more than 12 working days from the date of the locate request. If a scheduled excavation date is provided by the excavator to the notification center, the operator or contract locator shall mark the underground utility line and report the marking status to the positive response system by no later than 7:00 a.m. on the scheduled day of excavation. Any locate request made on a day that is not a working day shall be considered as having been submitted to the notification center on the next working day at 7:00 a.m.* If the operator is unable to mark the location within the time allowed under this section due to extraordinary *or exigent* circumstances, the operator shall notify directly the person who proposes to excavate or demolish and shall, in addition, notify the person the date and time when the location will be marked. The deferral to mark for extraordinary *or exigent* circumstances shall be no longer than 96 hours from 7:00 a.m. on the next working day following *the locate request*, unless a longer time is otherwise agreed upon by the operator and excavator. The operator shall also inform the notification center of any deferral.”
- **Page 61:** F now replaces “subsection B” with *subdivision 2*.

§56-265.24. Duties of excavator.

- **Page 65: A** now has *No excavator shall begin any excavation or demolition before reviewing and heeding the positive response marking status of the excavation area.* The rest of A remains unchanged.
- **Page 66: C is now:** “If, *after at least 48 hours beginning with 7:00 a.m. the next working day following a locate request or on the date of excavation*, upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility line in the area of the proposed excavation, the excavator shall not begin excavating until *three hours after an additional contact is made to the notification center for the area pursuant to subsection C of §56-265.17 and the excavator has verified that no information has been posted to the positive response system or information posted to the positive response system is inconsistent with the clear evidence observed by the excavator.*”

§56-265.24.1. Request to cease operation; immediate threat; penalty.

- **New Section – Will follow H on Page 66:** *“Notwithstanding the provisions of §56-265.15:1, any person, as defined in §56-265.15, who knowingly and intentionally excavates after being notified by a representative of the Commission of a determination that such excavation constitutes an immediate threat to safety or property and such representative requests that excavation cease is guilty of a Class 6 felony. The representative of the Commission shall immediately notify the agency with primary law-enforcement authority over the area of excavation, as well as the fire marshal, (i) that such excavation site is a threat to safety or property and (ii) of the request to cease excavation.”*

§56-265.31. Commission to establish advisory committee.

- **Page 68: A is now:** *“The Commission shall establish an advisory committee consisting of representatives of the following entities: Commission staff, utility operator, notification center, excavator, municipality, Virginia Department of Transportation, Board for Contractors, and underground line locator. Persons appointed to the advisory committee by the Commission shall have expertise with the operation of the Underground Utility Damage Prevention Act. The advisory committee shall perform duties which may be assigned by the Commission, including *reviewing* reports of violations of the chapter, *establishing positive response codes for use by the notification center’s positive response system*, and *making* recommendations to the Commission.”*

§56-265.32. Commission to impose civil penalties for certain violations; establishment of Underground Utility Damage Prevention Special Fund

- **Page 68: A now allows for 17A violations** (excavating without a locate request) to receive up to a \$10,000 penalty and all other violation to receive up to a \$5,000 penalty.
- **Page 69: C now includes the following verbiage:** *“Enforcement of this chapter also includes education and outreach provided by the Commission for training and educational programs for excavators, operators, utility line locators, and other persons.”*