WEST VIRGINIA CODE: §24c-1-5

§24C-1-5. Duties and responsibilities of excavators; failure of excavator to comply; civil penalties.

(a) Except as provided in section seven of this article, any person who intends to perform excavation or demolition work shall:

(1) Not less than forty-eight hours, excluding Saturdays, Sundays and federal or state legal holidays, nor more than ten work days prior to the beginning of such work, notify the one-call system of the intended excavation or demolition and provide the following information:

(A) Name of the individual making the notification;

(B) Company name;

(C) Telephone number;

(D) Company address;

(E) Work site location; including county, nearest city or town, street location, nearest cross street and landmarks or other location information;

(F) Work to be performed;

(G) Whether or not use of explosives is planned;

(H) Name and telephone number of individual to contact; and

(I) Starting date and time;

(2) Notify the one-call system not less than twenty-four hours, excluding Saturdays, Sundays and federal or state legal holidays, in advance of any change in the starting date or time of the intended work; and

(3) Instruct each equipment operator involved in the intended work:

(A) To perform all excavation or demolition work in such a manner as to avoid damage to underground facilities in the vicinity of the intended work site, including hand digging, when necessary;

(B) To report immediately any break or leak in underground facilities, or any dent, gouge, groove or other damage to such facilities, made or discovered in the course of the excavation or demolition and to allow the operator a reasonable time to accomplish necessary repairs before continuing the excavation or demolition in the immediate area of such facilities;

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(C) To immediately alert the public at or near the work site as to any emergency created or discovered at or near such work site;

(D) (i) To report immediately to the appropriate medical, law-enforcement and fire prevention authorities any break or leak in underground facilities, or any dent, gouge, groove or other damage to such facilities, made or in the course of the excavation or demolition which creates an "emergency' as defined in subdivision (1), subsection (c), section two of this article. For purposes of this subdivision, an excavator calling the "911" emergency telephone number satisfies this requirement; or

(ii) To notify the one-call system, within twenty-four hours, of any break or leak in underground facilities, or any dent, gouge, groove or other damage to such facilities, made or in the course of the excavation or demolition which does not create an "emergency" as defined in subdivision (1), subsection (c), section two of this article.

(E) To maintain a clearance between each underground facility and the cutting edge or point of any powered equipment, taking into account the known limit of control of such cutting edge or point, as may be reasonably necessary for the protection of such facility;

(F) To protect and preserve markers, stakes and other designations identifying the location of underground facilities at the work site; and

(G) To provide such support for underground facilities in the location of the work site, including during backfilling operations, as may be reasonably necessary for the protection of such facilities. Temporary support and backfill shall provide support for such facilities at least equivalent to the previously existing support.

(b) If any underground facility is damaged by a person who has failed to comply with any provision of this section, that person is liable to the operator of the underground facility for the total cost to repair the damage in an amount equal to that as is normally computed by the operator, provided that the operator:

(1) Is a member of the one-call system covering the area in which the damage to the facility takes place; and

(2) Upon receiving the proper notice in accordance with this article, has complied with the provisions of section three of this article: Provided, That a member is not barred from recovering costs solely for his or her own failure to comply with subdivision (1), subsection (d) of said section, but shall have his or her right to recover, if any, determined by common law, if the conditions of subsection (f) of said section are met.

The liability of such person for such damage is not limited by reason of this article.

(c) If any excavation or demolition causes damage to any underground facilities owned by an operator who is not required to be a member of a one-call system and who is not a member of such a system at the time of damage, the liability of the person causing damage shall be

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determined solely by applicable principles of common law.

(d) If any excavation or demolition causes damage to any other person or property, the liability of the person causing damage shall be determined solely by applicable principles of common law.

(e) Any person who fails to notify the one-call system prior to performing any excavation or demolition, or fails to follow the reporting provisions of this section, or who violates any other provision of this section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000.

(f) Nothing in this chapter may be construed to restrict or expand the rights, duties and liabilities provided in common law or by other provisions of this code of an operator who is not required to be a member of a one-call system and who is not a member of such a system.

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