MARYLAND UNDERGROUND FACILITIES
DAMAGE PREVENTION AUTHORITY

Eighth Annual Report to the Governor and the General Assembly of Maryland

2019

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Know what's below.
Call 811 before you dig.

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January 2019

To: The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland; and

The Honorable Thomas V "Mike" Miller and
The Honorable Michael E. Busch
Presiding Officers of the Maryland General Assembly; and

Members of the General Assembly of Maryland

Gentlemen and Ladies:

Pursuant to the Public Utilities Article of the Annotated Code of Maryland, § 12-144 - Annual Reports, I hereby, as the 2019 Chair of the Maryland Underground Facilities Damage Prevention Authority, submit this Eighth Annual Report to you. This document serves as an outline of the Authority's activities and accomplishments for the 2018 calendar year.

Sincerely,

Erik L. Phillips
Chairman, MUFDPA

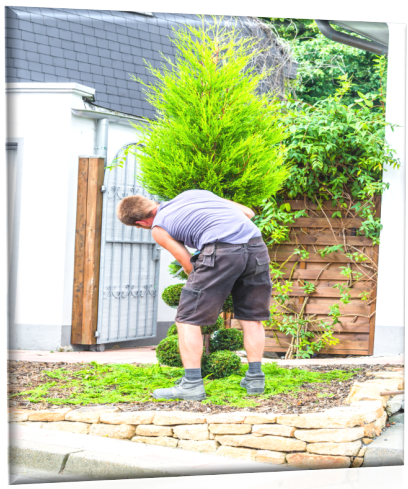
The MARYLAND AUTHORITY MISSION STATEMENT

The Authority seeks to protect underground facilities of owners in the State of Maryland from destruction, damage or dislocation to prevent:

-death or injury to individuals;
-property damage to private and public property; and
-the loss of services provided to the general public.

To accomplish this, the Authority seeks to promote, enhance, and assist the State of Maryland in enforcing the Maryland underground utility damage prevention law and furthering programs through efforts that include consistent enforcement, effective public education, and the constant knowledge that public safety through reduced damages is our prime concern.

Pursuant to the legislative intent enacted by the Maryland General Assembly, as part of the State Underground Facilities law, Article Public Utilities, Title 12, Section 12-102, the mission statement adopted by the Authority in 2010.



Executive Summary

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 to prevent death or injury to individuals; property damage to private and public property; and the loss of services provided to the general public.

- The Authority met twelve (12) times during the 2018 calendar year and received ninety-three (93) probable violations during this period. Twenty-six (26) of those NPV's were carried over from 2017. Seventy-one (71) violations were reviewed and acted upon. The remainder were wither rejected outright for insufficiency, or returned to the complainant for clarification or additional information

- The total fines assessed in 2018 were $183,000.00. Utilizing the Standardized Fining Matrix (SFM), which is required as a result of a 2016 Court of Appeals ruling, those fines were reduced to $148,570.00. The Authority also recommended Title XII Damage Prevention Safety training to all companies in violation of the statute. Those companies that participated in the voluntary training program were given a total of $59,177.25 in incentive discounts.

- The Authority intends to amend the current statute during the 2020 legislative session to make Damage Prevention Training mandatory (the Authority provides training via the MD/DC DPC at no charge to the violator). To-date, the Authority has assessed $92,445.75 in fines and collected $58.1215.75, with $48,877.00 outstanding. There were nineteen (19) hearings set by the Authority in 2018. Of those hearings, nine (9) were heard, seven (7) was settled prior to the hearing date and three (3) cases were withdrawn by the violator.

- Maryland remains FIRST in the nation for the lowest "hit rate" – 1.3%; * meaning, there was only one (1) damage per 1000 Miss Utility tickets in Maryland during the last reporting period (2017). This success can be directly attributed to the aggressive education and outreach programs of the Authority and other stakeholders in the Damage Prevention community.

- The Pipeline and Hazardous Material Safety Administration (PHMSA)which is a division of the United States Department of Transportation, once again evaluated the Authority for the 2017 State Damage Prevention Program for "Adequacy" in 2018. This review was the third annual evaluation for the Authority. In 2016, the Authority received an "Adequate" rating (highest level) for its 2015 program. Due to the partial federal government shutdown, no formal announcement has been made on the evaluation finding, however the Authority was assured that it will receive another "Adequate" rating.

- The Authority received a $57,000.00 State Based Program Federal Grant from the Pipeline & Hazardous Materials Safety Administration (PHMSA) in 2018. This is the seventh such award in the Authority's eight (8) years of operation, making the total awards $653,950.00. The PHMSA program is highly competitive, with all fifty (50) States and Puerto Rico competing for a portion of the $1,200,000.00 set aside each year for State Damage Prevention Programs. The maximum award is $100,000.00 per state. The average award granted to the Authority over the past seven (7) years is $81,743.75. The Authority intends to apply again in 2019 for additional funds for our data tracking initiative.

* *see page 8 for Excavation Damage Trend Chart – 2017 CGA DIRT report.*

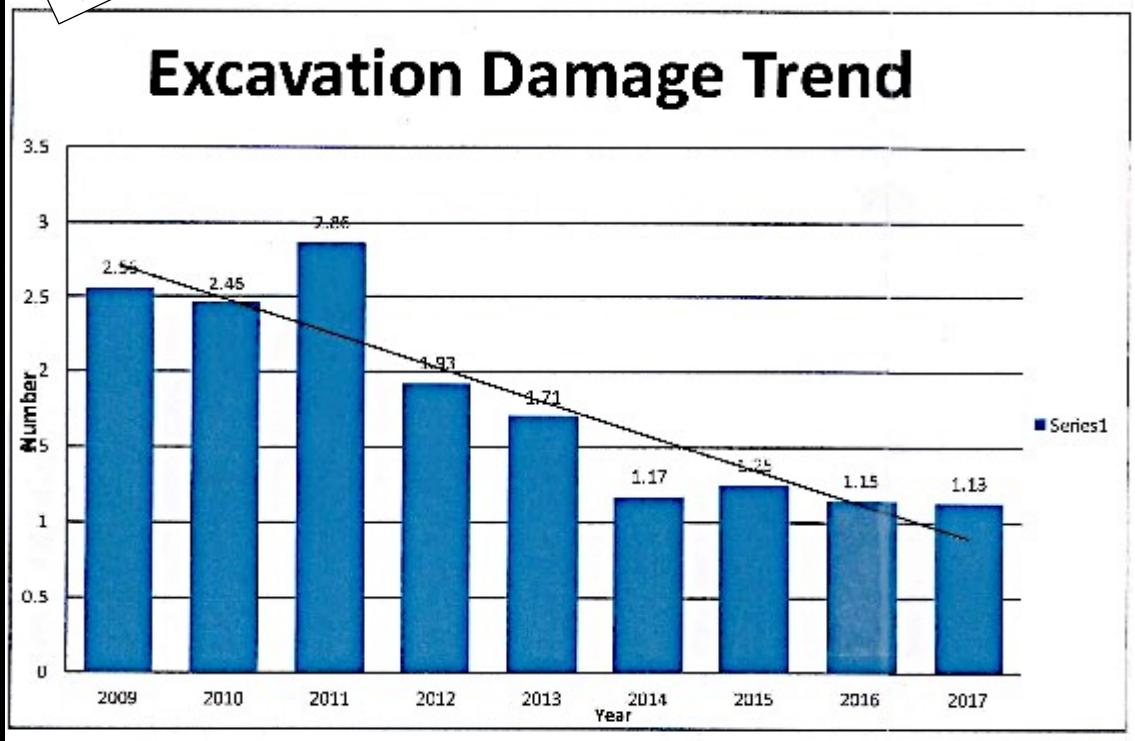
- In addition, the Authority website is undergoing a complete overhaul which will allow for greater ease in reporting violations, information sharing and report generation. This extensive undertaking was made possible by the Authority's success in obtaining grants from PHMSA for special projects.

- The Authority's emphasis continues to focus on enforcement as required by changes to the Federal Rules governing the State-based Compliance programs (Rule 9). As a result, a permanent funding source for the Authority's day-to-day operations was needed. The 2016 Maryland Legislature approved the Authority's request (HB696/SB480) for this dedicated revenue stream and began receiving on average $20,000.00per month in revenues from the .05 cent surcharge on all out going Miss Utility tickets in 2016. This amounted to $233,628.55 in revenue in the first year from qualified Miss Utility members. However, due to changes in the one-call mapping system; which was instituted at the request of facility owner members of the One-Call System, outgoing ticket numbers have declined considerably. In 2017, surcharge revenues dropped to $193,550.17; which constitutes a fourteen (14) percent reduction over 2016. That trend continued in 2018 which lead the reduction of staff at the Authority and other cost cutting measures due to a projected $45,000 budget shortfall.

- Despite budget pressures, the Authority does not and has never sought grants or aid from the State of Maryland. All fines collected by the Authority are used solely for Education and Outreach purposes. Maryland counties and Municipalities are exempted from the surcharge and any other charges associated with the issuance of a Miss Utility ticket under the current statute. They are, however, permitted by statute to charge $35.00 for locating their underground utilities and $15.00 for a one-time re-marking request.

- A major non-budgeted expense was the facilitation and coordination of the current overhaul of the Title XII - the "Miss Utility" law. The Authority gathered all significant stakeholders to undertake this major undertaking. Beginning in May 2017, the Title XII re-write committee met twenty-nine (29) times over an eighteen (18) month period and will continue their work throughout 2019. The Authority plans on the 2020 legislative session for the introduction of the Title XII overhaul. All staff-time, materials and ancillary expenses for the project were absorbed by the Authority.

Maryland's Damage Prevention Success Story…



2017 Common Ground Alliance DIRT Report…
Trend Analysis for Maryland

2017 CGA DIRT Report

WASHINGTON (Sept. 19, 2018) – Common Ground Alliance (CGA), the stakeholder-driven organization dedicated to protecting underground utility lines, people who dig near them and their communities, today announced its findings and analysis of utility damage and near-miss events in the 2017 Damage Information Reporting Tool (DIRT) Report.
The report, which analyzes all 2017 data submitted anonymously and voluntarily by facility operators, utility locating companies, one call centers, contractors, regulators and others, used a refined statistical modeling process to estimate that **439,000 excavation-related damages to underground facilities occurred in 2017, up 5.5 percent from a revised 2016 estimate**.

CGA, in collaboration with its statistical analysis consultant, Green Analytics, applied a new approach to estimating total U.S. damages for 2017, as well as the previous two years. It found that while estimated damages increased year-over-year from 2015 to 2016 and again from 2016 to 2017, when excavation activity is considered, damages have effectively plateaued during this three-year span, as measured by ratios of damages to construction spending and damages to utility locate notifications from one call centers to their member facility operators.

The 2017 DIRT Report includes an analysis of when damages occur, by month and day of the week, for the first time, leading to several findings that can help damage prevention stakeholders best target their public awareness messages. Specifically, the report found the following:

- Damages that occurred on a weekend were nearly twice as likely to have involved hand tools (shovels, post-hole diggers, etc.) than those that occurred on a weekday.
- 50 percent of all reported damages occurred between June and September in 2017.
- August was the month with the most total damages in 2017.

Among all damage reports with an identified and known root cause, the majority (52.2 percent) occurred because of insufficient excavation practices, continuing a trend from recent years where this was the top identified root cause in the DIRT Report. Other identified root causes were as follows:

- Notification not made – 23.5 percent
- Locating practices not sufficient – 16.8 percent
- Miscellaneous – 6.5 percent
- Notification practices not sufficient – 1.0 percent

"As the leading source of utility damage data and analysis, CGA is constantly evaluating the statistical models we use to ensure we are producing the best possible report to guide our public awareness, education and training efforts in the damage prevention industry," said Sarah K. Magruder Lyle, president and CEO of CGA. "The latest DIRT Report shows that our collective challenge to reduce utility damage is increasing as excavation activity increases. CGA stands ready to support all damage prevention stakeholders in addressing this challenge through public awareness campaigns, Best Practices, regional partnerships, promotion of new technologies and offering resources to educate state policymakers on the importance of balanced and effective enforcement laws."

"CGA's Data Reporting and Evaluation Committee took on a significant challenge during the past year as we re-evaluated the way we analyze and report on submitted data," said Bruce Campbell, Data Committee co-chair from MISS DIG 811, the one call center for Michigan. "DIRT data is one of the best tools available for any damage prevention stakeholder who seeks a better understanding of why damages occur."

The complete DIRT Annual Report for 2017 is available for download at www.commongroundalliance.com, and stakeholders interested in submitting data to the 2018 report or establishing a Virtual Private Dirt account should visit the DIRT site at www.cga-dirt.com.

About the Common Ground Alliance…

CGA is a member-driven association of 1,700 individuals, organizations and sponsors in every facet of the underground utility industry. Established in 2000, CGA is committed to saving lives and preventing damage to underground infrastructure by promoting effective damage prevention practices. CGA has established itself as the leading organization in an effort to reduce damages to underground facilities in North America through shared responsibility among all stakeholders.

In promoting a spirit of shared responsibility, the CGA welcomes all stakeholders who would like to be a part of the identification and promotion of best practices that lead to a reduction in damage. Any best practice or program endorsed by the CGA comes with consensus support from experts representing the following stakeholder groups: Excavators, Locators, Road Builders, Electric, Telecommunications, Oil, Gas Distribution, Gas Transmission, Railroad, One Call, Public Works, Equipment Manufacturing, State Regulators, Insurance, Emergency Services and Engineering/Design.

Officially formed in 2000, the CGA represents a continuation of the damage prevention efforts embodied by the Common Ground Study. Sponsored by the U.S. Department of Transportation and completed in 1999, this Study represents the collaborative work of 160 industry professionals who identified best practices relating to damage prevention.
The CGA provides today's optimal forum where stakeholders can share information and perspectives and work together on all aspects of damage prevention issues. This allows the achievement of results that would otherwise be impossible. The CGA is working with industry stakeholders and regulators to produce stronger, more effective results through partnership, collaboration, and the pursuit of common goals in damage prevention.

The Common Ground Alliance is dedicated to preventing damage to underground utility infrastructure and protecting those who live and work near these important assets through the shared responsibility of our stakeholders.

Information and Analysis
Develop information and analysis designed to enhance our members' ability to implement effective damage prevention processes and programs.
Education
Increase education of the industry, public and policymakers about the importance of the damage prevention process.
Stakeholder Engagement
Provide a collaborative forum for stakeholders to identify and highlight effective damage prevention practices and programs.

How Maryland Measures Up...

- The Common Ground Alliance (CGA) (see above) DIRT report has become an invaluable tool for states across the country to assess the effectiveness of their mandated state-based damage prevention programs. From the outset, Maryland has led the nation with "hit" averages well below the national norm, even as a 5.5% uptick in excavation damages in 2017 over 2016 was predicted by forecasters. In 2009, one year before the Maryland General Assembly established the Maryland underground Facilities Damage Prevention Authority ("the Authority"), the hit average was 2.56% per 1000 tickets, an enviable number for some jurisdictions today. Since the Authority's inception, as evidenced in the Trend Analysis Chart on page eight (8), Maryland has aggressively addressed this issue and has consistently improved its damage prevention statistics.

- Maryland has consistently shown leadership in the underground facility safety arena through its participation from day-one in the national dialogue. Many industry professionals from Maryland participated in the "Common Ground Study" which was Sponsored by the U.S. Department of Transportation and completed in 1999, this study represented the collaborative work of 160 industry professionals who identified best practices relating to damage prevention. The Chairman of the Common Ground working group was James A. Barron, then owner of Ronkin Construction, in Harford County, MD, an already nationally recognized leader in the underground pipeline safety discussion. Mr. Barron went on to become the first Chairman of the Common Ground Alliance; which was Officially formed in 2000, the CGA represents a continuation of the damage prevention efforts. Barron now heads the "Authority "in the capacity of Executive Director, a position he has held since 2013.

- The Authority's Education and Outreach activities continued to grow in 2018. The Authority has either participated in, or supported thirty-two (32) events, spanning over fifty-four days (54) in 2018; which reached 183,306 members of the public as well as industry professionals. The Authority also helped to facilitate the training of 3,414 industry workers at sixty-six (66) training sessions on the "Miss Utility" law throughout Maryland. All fines collected from violators of the "Miss Utility" law go directly into the Authority's Education and Outreach Fund, which underwrites the Authority's training and community awareness programs.

- The Authority website can also be accessed through the "Miss Utility," One Call Concept and the USPCDs websites; which are the portals for on-line excavation ticket requests. In addition, our members and allied partners are encouraged to share links that could be placed on the Authority's website, to other relevant organizations, training opportunities and conferences. The Authority continues to purchase materials and create literature for distribution at the various conferences, conventions, and trade shows and the training sessions it attends.

- The Authority regularly participates in the MML and MACo Conferences as well as other venues and are often called on to participate in national forums on underground safety. The Authority and its stakeholder partners continue to produce instructional materials in Spanish in order to better serve the many Latino underground utility and construction companies and their workers who operate in Maryland. The Title XII law has been in effect for seven (8) years, with very few changes over the ensuing years. At the request of the major the Maryland stakeholders (Washington Gas, Columbia Gas, Chesapeake Utilities, BGE, Comcast, Verizon, MML, MACo, Pipeline Operators, Contract locators, Utility Contractors, Commercial Developers, Home Builders, Multi-family Housing, Miss Utility and others) the Authority is facilitating the complete overhaul of Maryland's underground facilities law. The first meeting of the Title XII rewrite was held in May of 2017 and continued on through 2018.

Target 2020…

Title 12 Rewrite

- Targeting a 2020 General Assembly session introduction, the Authority convened a steering committee to tackle the overhaul of the Title XII statute. The group agreed to operate under a "consensus model"; which was utilized when Common Ground Study was conducted and also when the Maryland Title XII law was originally written 2009.

- The committee met twelve (12) times in 2017 and another eighteen (18) sessions in 2018 with a number of significant agreements coming forward for the 2020 draft legislation. Some of the areas under discussion are mandatory Damage Prevention Training, addressing the abuse of "Emergency Tickets", Responsible Contractor definitions, as well as definitions that address changes in industry methods and practices such as the dangers of "Cross-Boring". The complexity of underground facilities in the age of directional drilling or trenchless technology have begun a national conversation the inherent dangers associated with the practice. Also discussed were increasing penalties and enhanced training requirements for repeat violators.

Preliminary Title 12 Changes for the 2020 Introduction

- New or enhanced definitions added for:
  - Clear Evidence
  - Contract Locator
  - Cross Bore
  - Damage
  - Detectable and Locatable
  - Emergency
  - Excavator
  - Extent of Work
  - Mark
  - Primary and Temporary Excavator
  - Trenchless Technology
  - Underground Facility

- Removed Homeowner Exemption in §12-103 and added language that all utilities installed after 10/1/2020 must be "Detectable and Locatable".

- Some housekeeping additions to the Authority, It's Procedures, Member Replacement, Funding, Enforcement and Hearing Procedures; Sections §12-106 through §12/113.

- Added additional language to §12-121 – Emergency excavation or demolition:
  - Trying to reduce the abuse of the Emergency Tickets

- Added the ability to add a "Temporary Excavator" to a ticket in section §12-124

- Changed §12-125 from "Repeat notification" to "Re-Notification":
  - Itemized types of "Re-Notification".
    - Not complete with excavation
    - Expanding excavation
    - Re-Mark
    - Add a "Temporary Excavator"

- Added requirements to accommodate the enhanced definition for "Extent of Work" to §12-126 – Marking Requirements to allow the locator to focus specifically on "Extent of Work".

- Renamed §12-127 from "Excavation after notice that facilities marked or not in vicinity" to "Requirements prior to performing excavation or demolition":
    - Before the requirements in §12-127 only applied if the person had a ticket and a positive response existed.
    - Enhanced language under:
        - Maintenance of the Marks
        - Duties of Excavator
        - Clear Evidence
        - The use of
        - Trenchless Technology

- Added a new section §12-130 – Primary Contractors and Temporary Excavators:
    - Outlined when they could be used and requirements of each.

- Changed Part V from "Designer Requests" to "Other Requests"; and
    - Section §12-131 from "Designer initiating ticket request" to Non-Excavation ticket request:
        - Paired down the Designer Ticket to just providing contact information.
        - Added notification language about potential "Cross Bores".

- Made changes to §12-135 – Civil penalties:
    - Codified language from the March 26, 2016 Maryland Court of Appeals decision in the Reliable Contracting vs. MUFDPA case that requires the Authority to consider three items when assessing fines
    - Allows maximum fines to those violators that ignore us
    - Allows the increase of maximum fines from $2,000 to $4,000 for subsequent violations other than No Calls
    - Adds a fine for non-appearance at a hearing
    - Allows for the maximum fine for abuse of the Emergency Ticket

Hand excavation is a CGA Best Practice

Above is an example of a "Best Practice"-

Digging "test pits" or pot-holing is a requirement of the "Miss Utility" Law §12-127 (c)(2)

District Heights, Prince Georges County

Below is NOT a "Best Practice"

This contractor not only violated the mechanical equipment section of the law §12-127(c), he also drilled a hole in this gas main (yellow pipe) to see if it was pressurized.

Is This a Violation?

Yes! Removing Asphalt or Concrete without a Miss Utility Ticket is considered excavation activity and is a violation of Title XII which is a violation of §12-127(c) - Using mechanical equipment within 18" of an underground facility.

This too…

Yes! Using mechanized equipment within 18" of an underground facilility is a violation of §12-127(c)(3).

Baltimore City

Violation of §12-127(c)(2) - Using Mechanical Equipment within 18" of the Tolerance Zone and within 18" of the Marks. Below this 6000psi hammer was a 115,000-volt electric cable.

New Carrollton, Prince Georges County

During this deck installation, the Contractor removed the bollard protecting the gas meter in order to auger a hole for a deck support, violating §12-127(e), the "Clear Evidence" section of the statute.

Operating Practices
of the
Maryland Underground Facilities Damage Prevention Authority

NPV Procedures 3.0

1) Upon receipt of a Notice of Probable Violation (NPV) from the complainant, the Authority verifies the contact and incident information contained in the online submittal for sufficiency and accuracy and then notifies the probable violator via Notice of Investigation (NOI) and the complainant via Notice of Receipt (NOR) by regular US mail. The probable violator is encouraged to contact the Authority upon receiving the NOI letter in order to provide additional information.

2) The Executive Director shall complete a thorough and comprehensive investigation of the facts surrounding the NPV. The Executive Director shall determine whether he believes a violation of Subtitle 1 of Title 12 of the Maryland Public Utilities Article has occurred and a penalty is due based on such investigation. In its March 28, 2016 decision in *Reliable Contracting v. Maryland Underground Facilities Damage Prevention Authority* upholding the constitutionality of the Authority, the Maryland Court of Appeal directed the Authority to use the following three factors to determine the amount of any penalty assessed by the Authority: a) seriousness of the violation, b) intent ("good faith") of the violator, and c) past history of violations. The Authority used these factors to create a Standardized Fining Matrix ("SFM"). The Executive Director shall use the SFM to determine the amount of the penalty to recommend to the Authority.

3) The Executive Director shall then present the entire review of the NPV together with all supporting documentation and the SFM calculations to the Authority at its next regularly scheduled closed meeting. At the closed meeting, the Authority will a) decide that a civil penalty and/or training be imposed after the probable violator is notified and given the opportunity to attend a hearing, (b) request additional investigation to acquire more information and documentation for further review of the NPV before making a decision, or (c) dismiss the NPV for (i) lack of documented violation, (ii) lack of documented probable violator, (iii) lack of sufficient evidence and documentation to proceed with any further investigation or (iv) any reason the Authority may deem reasonable for not proceeding with any further investigation or review of the NPV.

4) If the Authority determines that a civil penalty and/or training be imposed after the opportunity for a hearing, the Executive Director will notify the probable violator by certified and first-class mail sent to the address of the probable violator on the records of the Authority. Or, to the address or entity on the records of the Maryland State Department of Assessments and Taxation of (a) establishment of the Authority and its legislative intent and authority, (b) details of the NPV as outlined in the initial submission by the complainant, (c) research of the Authority, (d) possible effects of § 12-135 of the Maryland Public Utilities Article, (e) probable violator's rights, remedies and options, and (f) existence of Maryland's Administrative Procedure Act (APA) and how it impacts the hearing process. The notice shall request that the probable violator contact the Authority within thirty (30) days of the date of the notice.

5) If the probable violator does not respond to the Authority's letter within thirty (30) days, the Executive Director shall send a second letter using the process set forth in section 4. This notice may also be delivered by process server.

6) If the probable violator responds to either the first or second letter, a settlement may be reached pursuant to which the amount of the penalty initially determined may be reduced.

7) If the probable violator does not respond within thirty (30) days of the second letter, the Executive Director shall bring the issue back to the Authority at its next regularly scheduled meeting, at which time the Authority shall assign a hearing date for the NPV. The probable violator shall be notified of the hearing date using the process described in section 4 and section 5. The Authority may subpoena witnesses.

8) On the date of the hearing, the Executive Director shall present the evidence of the violation. The probable violator shall have the opportunity to submit evidence and present a defense. All testimony shall be given under oath and the proceedings shall be recorded. If the probable violator fails to appear, that fact shall be noted. After the hearing, the Authority shall meet in closed Executive Session and determine whether A) a penalty should be assessed against the probable violator and B) if the penalty should be assessed, the amount of such penalty, using the SFM. The Authority may determine that instead of or in addition to a penalty, it will require the probable violator to participate in damage prevention training. The Authority shall issue a decision in writing, stating the reason for its decision.

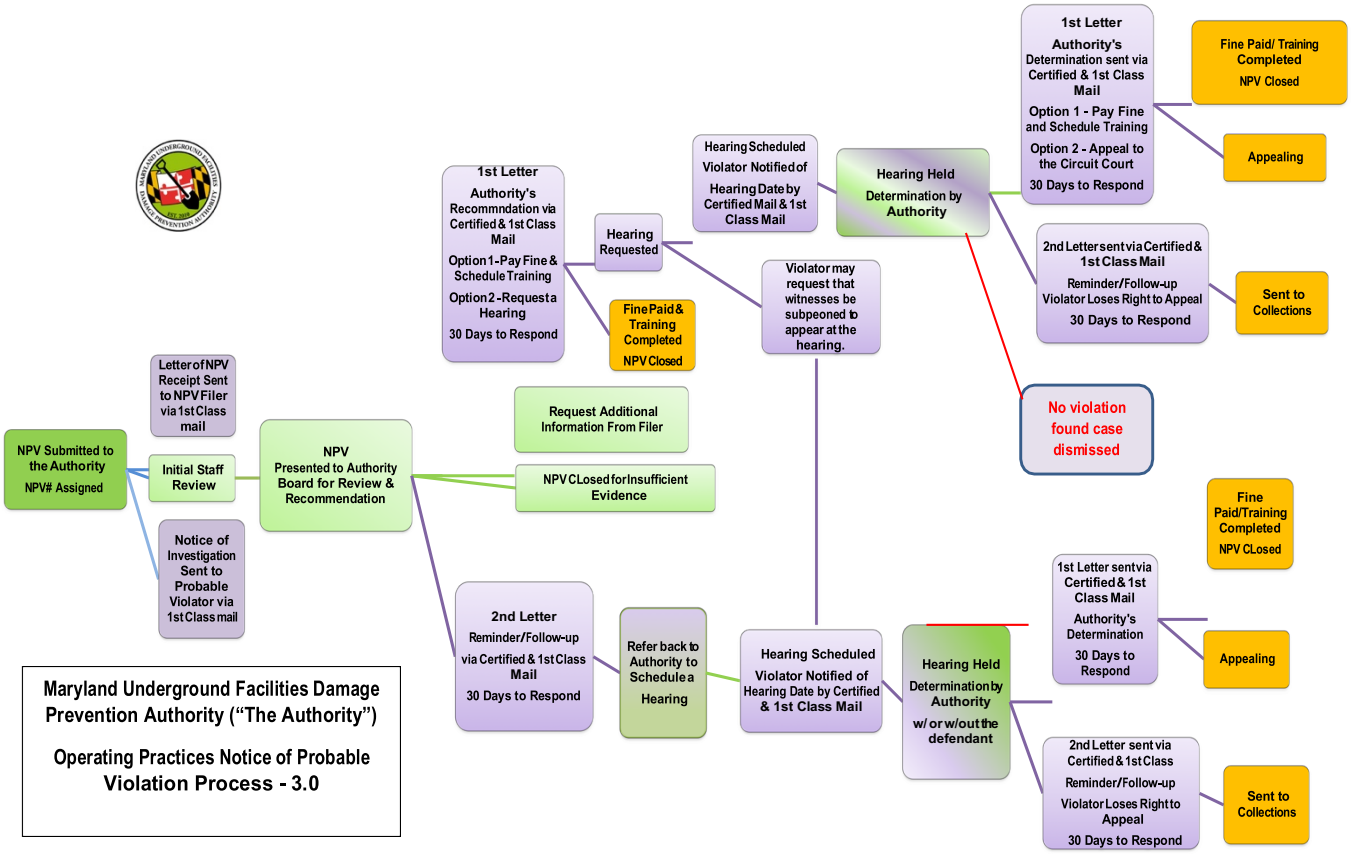
9) The Executive Director shall send a copy of the written decision of the Authority to the probable violator by certified and first-class mail and shall notify the probable violator of the right of any person aggrieved by a decision of the Authority to request judicial review by the Circuit Court for Anne Arundel County, Maryland within thirty days (30) after receiving the decision.

10) Should the probable violator miss the thirty-day (30) deadline within which the violator must seek judicial review a second letter will be sent by both certified and first-class mail notifying the probable violator that it has lost its right to appeal to the Circuit Court. (Note: If at any time during these time frames, the Authority receives payment for the civil fine and notification of participation in Title XII training, the case will be closed).

11) If there is still no response from the probable violator, the case will be sent for collection action. In addition to collection action, any probable violator who does not fulfill any of the requirements set down by the Authority, will be placed in a Closed/Incomplete Status, which can be used as evidence when applying SFM standards in any future probable violation hearing before the Authority.

This jumble of underground facilities is what excavators experience daily in the ***City of Baltimore…***

The NPV Process



Could this be a Violation?

Yes - Any demolition activity in Maryland requires a "Miss Utility" ticket - which is defined in §12-101 of the Title XII statute

Glen Burnie, Anne Arundel County

This an example of what can happen when a facility is mis-marked. The high-profile communications line in the photo was marked 12 feet in error, causing the contractor to damage the line. Very costly to repair and very disruptive to customers.

2018 NPV Breakdown

- Since its inception in 2011, the Authority has received 323 Notices of Probable violations (NPV) and has collected $229,392.45 in fines for the Education and Outreach Fund.

- A March 2016 Maryland Court of Special Appeals ruling (*Reliable Contracting v. Maryland Underground Facilities Damage Prevention Authority*) required the Authority to use three standards when assessing penalties: 1) Seriousness of the incident, 2) Intent to Follow the Law, and 3) History of Previous Violations) which accounted for a $35,525.00 reduction in Education & Outreach funds. Additionally, violators were given "up-front" discounts to encourage participation in the voluntary Damage Prevention Program. This accounted for an additional reduction amounting to $63,112.00 during FY 2018.

- The Authority received Sixty-seven (67) Notices of Probable Violation (NPV's) in 2018, added to the Twenty-six (26) NPV's carried over from 2017, totaling Ninety-three (93) NPVs

- Of those Ninety-three (93) NPVs

  Twenty-three (23) were Closed in 2018.

  - **Ten** (10) fines were paid and training completed.
  - **Nine** (9) Withdrawn by complainant.
  - **Two** (2) rejected by the Authority for incomplete information.
  - **Two** (2) moved to Closed/Incomplete status. **

  Seventy-one (71) remained Open in 2018

  - **Twenty-seven** (27) remain open due to wither no training scheduled or fine past due.
  - **Fourteen** (14) have paid the fine, but not yet scheduled or completed training.
  - **One** (1) was sent back to the complainant for further explanation.
  - **Six** (6) were reviewed on January 7, 2019
  - **Twenty-three** (23) received in December 2018 have not yet been investigated.

***These cases received this status for a number of reasons. Most notably were those companies that refused to accept certified mail notices or had bad addresses and were not locatable. Another group refused to participate in Damage Prevention Training or took training but did not pay their fines. NPV's in this category will be reopened should another violation be reported to the Authority and used as additional evidence when being evaluated by the Authority Board.*

Bethesda, Montgomery County

The damage to the gas service line in this photo could have been avoided if the contractor has paid attention to the "clear evidence" (§12-127) on this job site. The gas meter was an excellent clue to where the gas service was entering this building. Had they called Miss Utility, the gas line would have been marked. Without location marks, the contractor should have called in a discrepancy, since the gas meter clearly showed a buried service existed.

How the Statute was Abused in 2018

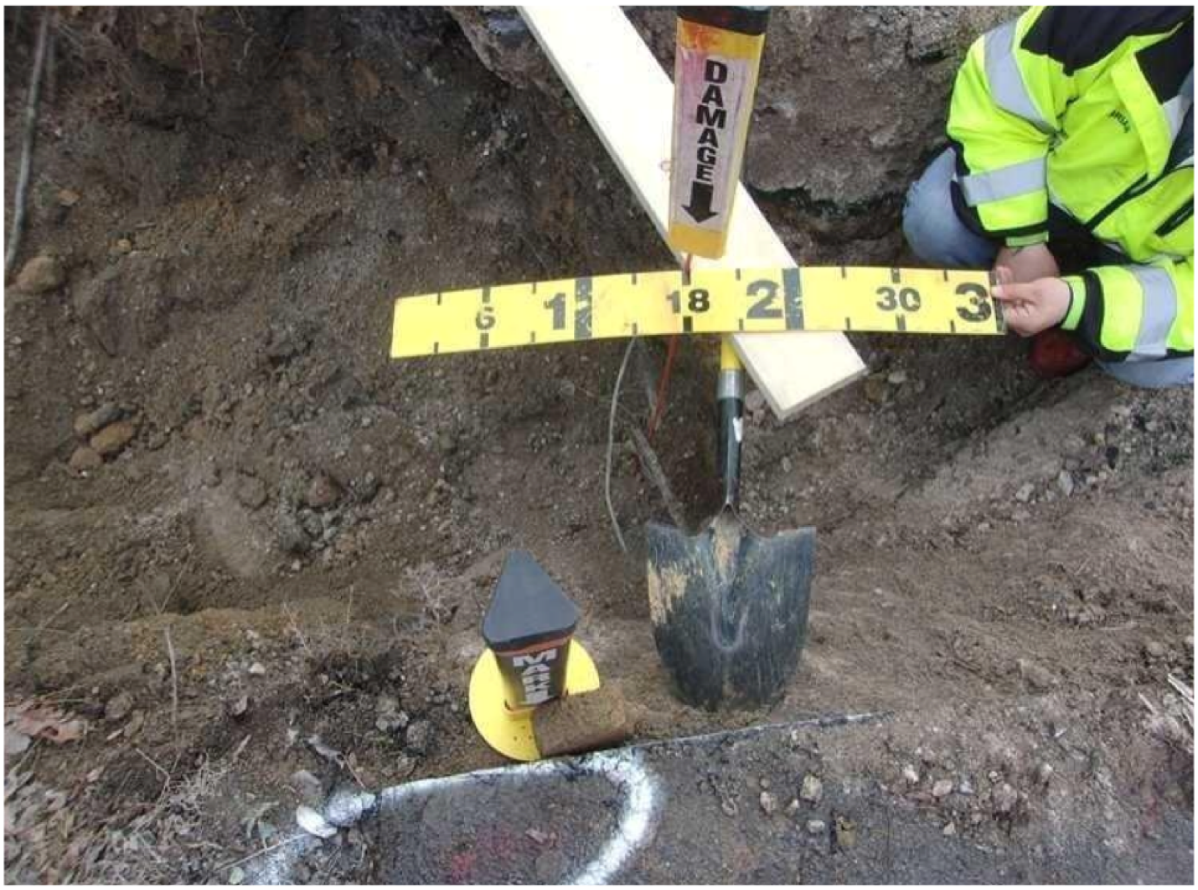
When Notices of Probable Violation are filed on the Authority Website, the person filing the complaint can identify one or multiple probable violations of the Annotated Code of Maryland, Public Utilities, Title12 – Public Utilities statute. Those probable violations breakdown into the following categories identified in the statute and in the numbers associated with each probable violation filed.

- **Section §12-124 – Notice to One-Call System**
  - Of the ninety-four (94) probable violations filed.
    - Fifty-two (52) failure to call, 1st offense.
    - Seven (7) failure to call, 2nd offense.
    - Three (3) failure to call, 3rd offense.
    - One (1) failure to call, 4th offense.
    - Six (6) Working on expired ticket.
    - Two (2) working outside the extent of work area.

- **Section §12-126 – Marking Requirements**
  - Of the Five (5) probable violations filed:
    - Five (5) were failure to mark per statute.

- **Section §12-127 – Excavation after Notice that Facilities are either Marked or are No Conflict.**
  - Of the thirteen (13) probable violations filed:
    - One (1) Maintenance of marks.
    - One (1) Excavation before ticket was cleared.
    - One (1) Clear Evidence.
    - Eight (8) operating with due care.
    - Three (3) Excavation within 18" of a facility.
    - Two (2) No test pitting.

Ellicott City, Howard County



This is an example of a "hit kit" which is used to identify the damaged area during a typical investigation. The damaged gas service line lays under the tolerance zone measure, the white paint circle shows where the original red mark for electric service was at the time of excavation. The violation in this photograph is digging within the 18" tolerance zone §12-127(c)(2).

Parkville, Baltimore County

This Damage Occurred when a Contractor attempted to clean out a Storm Water Management Pond without a "Miss Utility" Ticket!

The Result?

The Contractor broke a small gas service line off a large gas transmission line. This was the 2nd violation by this Contractor, who has refused to take Damage Prevention Training or pay the fine imposed by the Authority.

Silver Spring, Montgomery County

Why was this contractor surprised when he struck a gas line?

Deck installations cause a multitude of damages to underground facilities in Maryland! This is a violation of §12-124 (Failure to call Miss Utility) and §12-127 (Clear Evidence.) This deck installer did not have a "Miss Utility" ticket and was digging immediately in front of a gas meter…!

PHMSA Evaluation

2017 Maryland Authority Adequacy Assessment

Notes from the November13, 2018 Teleconference

Participants
Dave Applebaum – PHMSA
Jim Barron – MUFDPA
Susan Stroud – MUFDPA

- Disproportionate violations reported on the Excavation Community – since the Authority is a Complaint Driven Enforcement Authority, and the majority of complaints are filed by facility owner/operators; and not by other stakeholders, particularly not by excavators. In the opinion of PHMSA at least 35% of all complaints should be against facility operators and their locators. Current practice creates an inequitable enforcement problem (i.e. there are not a sufficient number of complaints concerning utility locating practices). It should be noted that a committee of PHMSA Regulators are planning to review this issue and come up with a plan of action that could be developed into "Rule Making". In order to remedy this situation, PHMSA suggested that the Authority should:

    - Gather damage reports from the One Call Center and look particularly at reports involved with inadequate locating practices, and
    - File complaints in those areas, in an attempt to reduce inequities for them.
    - Partner with big Operators to identify violations requiring stepped-up enforcement.
    - Investigate developing a self-reporting program for Operators/Locators for violations, also known as "mandatory reporting" - the Maryland Authority has been unable to gain support for this type of self-policing.
    - Encourage the Maryland Public Service Commission to take a more active role in enforcement of Title XII violations; which could lead to much higher fines than the Authority has the ability to assess under current statute.

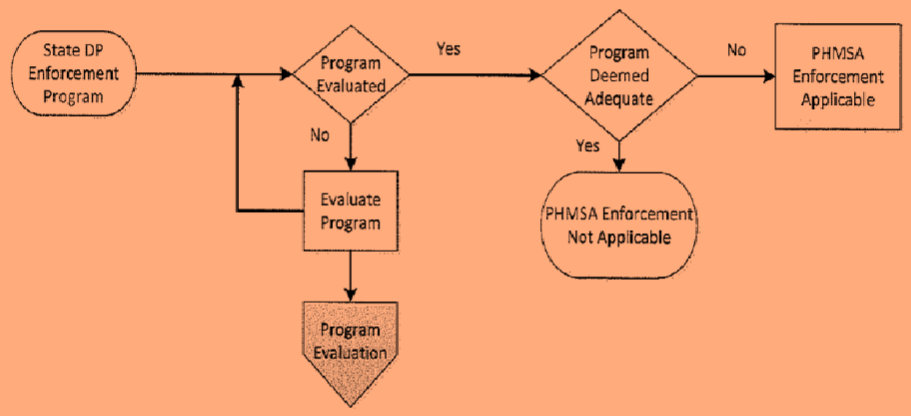
- Homeowner Exemption (§12-103) – any homeowner in Maryland excavating without the use of mechanical equipment on their own property is exempted from the "Miss Utility" law. If a homeowner damages an underground facility during that exempted excavation and repairs the damaged line with duct tape and gorilla glue should this constitute a violation of §12-127 (d) which requires any damage to underground utilities be reported?

- Effectiveness - Does the enforcement authority assess the effectiveness of enforcement actions over time using data and other relevant information?
  No, because the data collected over time by the Authority is skewed because of the "Complaint Driven" model utilized in Maryland. PHMSA would like to have all fifty states use mandatory reporting for precise data collection. There is resistance in the stakeholder community to implement mandatory reporting. The Authority will probably receive a "0" in this criterion.

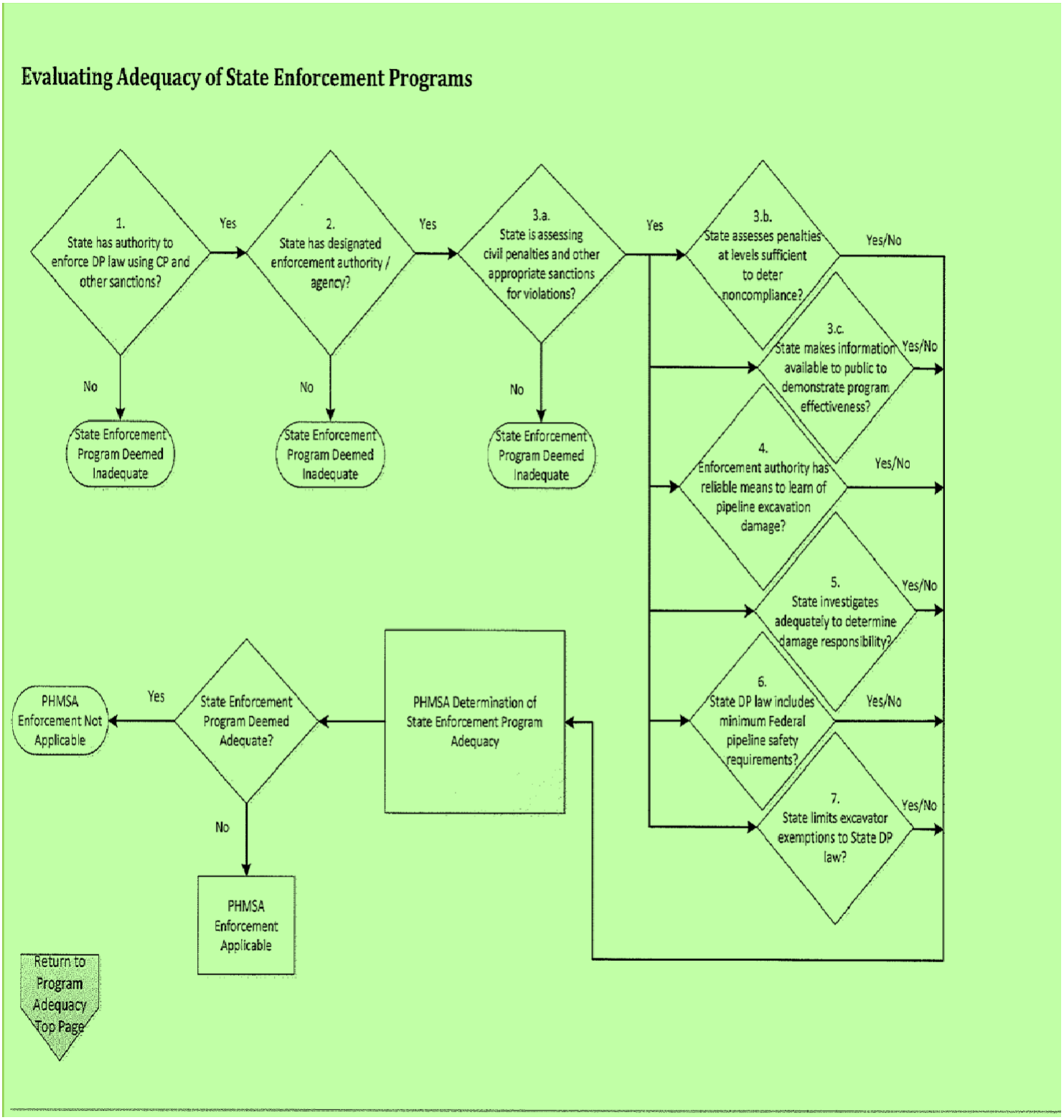
PHMSA Evaluation Process

State Damage Prevention Enforcement Program Adequacy

- Reference: 49 CFR 198 Subpart D
- Note: 49 USC 60114(f) limitation is not applicable to PHMSA 1st and 2nd party excavator enforcement



PHMSA Weighting System for establishing Program Adequacy



Hidden Dangers in Maryland…
"Legacy" Cross-Bores

Across the State of Maryland, a myriad number of "legacy" cross bores go undetected. Under current statute, storm water lines are not required to be marked nor are they detectable in today's world, these innocuous conduits for stormwater can become ticking time-bombs if they have been compromised by a gas main or high voltage electric lines. This has become a health and safety issue for both utility and maintenance workers as well as the general public. The Title XII Committee feels it is imperative to address this issue in the 2020 draft.

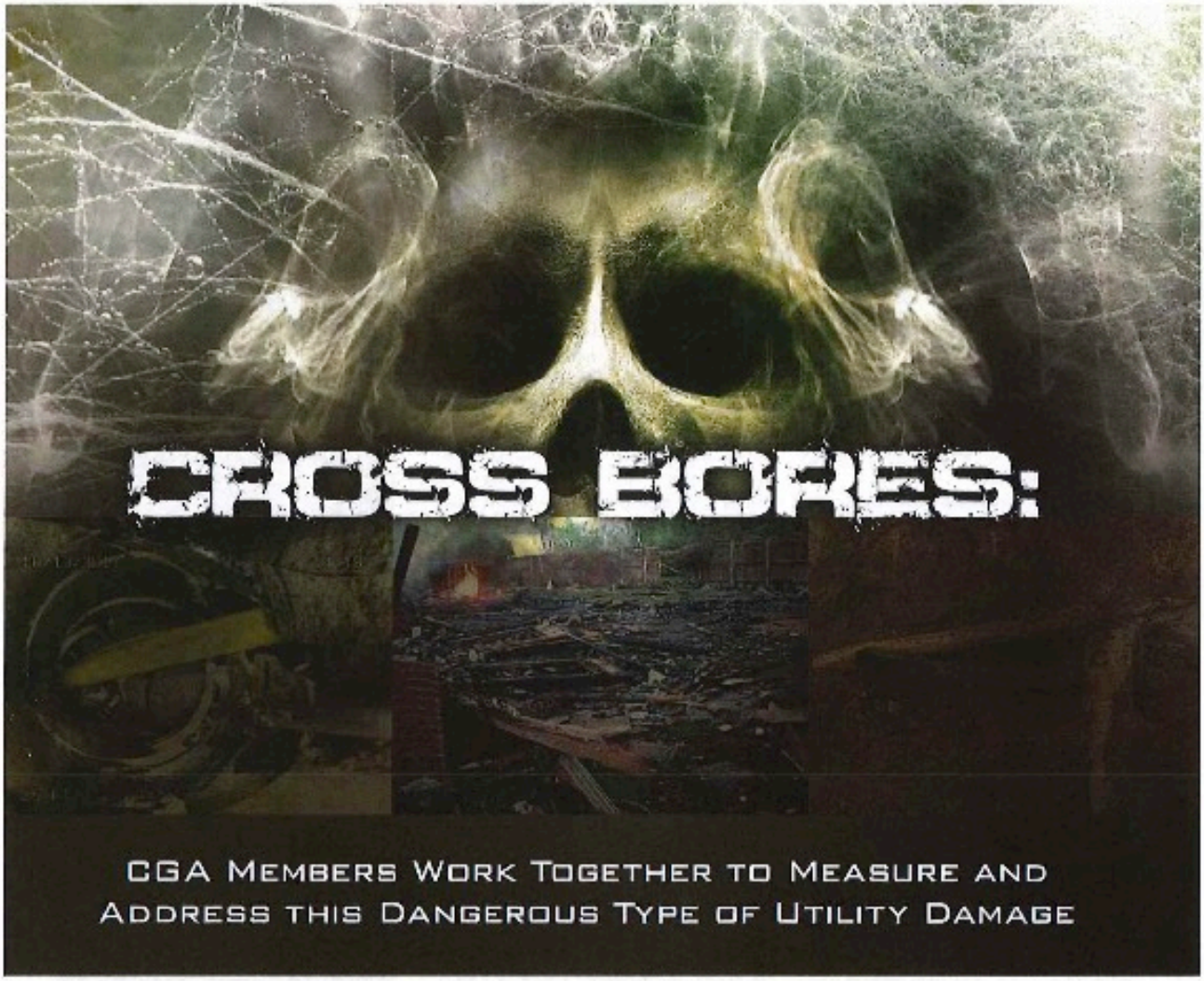
Unlocatable storm sewer with an intersecting gas line - This is a classic Example of a "Cross-Bore".

"Call before you Clear"- Several jurisdictions around the country have initiated programs to encourage plumbers and public works departments to call before they clear sewer clogs outside the public right-of-way. This issue has arisen as a result of the proliferation of "legacy" cross-bores and the ensuing dangers of clearing sewer clogs with mechanical devices. Several remedies are under discussion by the Title XII rewrite committee.

In 2016, the Authority amended the Title XII statue to require sewer laterals on private property to be equipped with detectable tracer wire in order to address threats of cross boring to homeowners. In 2016, the Maryland General Assembly overwhelmingly approved the measure; which was a big first step in addressing this issue. Language will be added to the 2020 draft legislation to widen the application of detectable or locatable technology and means in both definition and practice in order to further protect infrastructure and Maryland's citizens from these potentially deadly situations.

Prince Georges County

Five (5) large gas service lines were cross-bored through an unlocatable residential water main… the danger from these occurrences have a very real potential for catastrophe!



CROSS BORES:

CGA Members Work Together to Measure and Address this Dangerous Type of Utility Damage

CROSS BORES, which occur when an existing underground facility is intersected by another, is a persistent issue in the damage prevention industry. A number of factors combine to make the issue particularly complex. Given the serious nature of the incidents they can lead to, Common Ground Alliance (CGA) members continue to work through the consensus-based process to address cross bores. Cross bores can be considered a two-pronged issue: 1) avoiding creation of new ones, and 2) avoiding incidents caused by the ones already in the ground.

CGA members are sharing their experiences with cross bore mitigation and collaborating on the ways the damage prevention industry as a whole can work to reduce the impact of this type of utility damage. In 2018, CGA's Damage Information Reporting Tool (DIRT) is incorporating new questions designed to better measure instances of cross bores, our first Technology Report included a case study on possible technical solutions for cross bore identification, and our Best Practices committee is reviewing existing cross bore determination and mitigation practices.

A Complex Problem

Sewer lines, which are often non-metallic and therefore difficult to locate using traditional methods, are most often affected by cross boring. When a gas main or service is inadvertently placed through a sewer line, typically using "trenchless" excavation methods, the resulting cross bore creates a particularly dangerous situation. When a sewer blockage occurs, attempts to clear it can result in gas migration into residences and businesses, with the potential for an explosion.

Compounding the issue is the reality that sewer laterals are often owned by municipalities exempted from One Call membership. As a result, these laterals are not always located and marked. During the facility installation process, gas utilities can attempt to locate sewer lines using surface ground penetrating radar (GPR), acoustic/seismic measures, traceable wire, electronic markers or closed circuit television (CCTV) camera inspections – a process that typically falls to a specialized contractor.

With several stakeholder groups directly and indirectly involved in the cross bore issue, CGA's consensus process is essential as we work to reduce this type of damage.

How Member Washington Gas Tackles Cross Bores

CGA member and Bronze Sponsor Washington Gas delivers natural gas in the Washington, D.C. metro region, and has developed a robust and effective cross bore mitigation program after beginning to look at the issue seriously in 2008. Washington Gas' multi-pronged approach proactively identifies legacy cross bores, addresses new facility installation processes to prevent new cross bores, and integrates day-to-day operational procedures to prevent dangerous situations from developing.

To find and address legacy cross bores, Washington Gas began to systematically review its records to identify locations where the possibility of cross bores was high due to known use of horizontal directional drilling (HDD), moling or other trenchless digging techniques, known conversion work, areas where its facilities are buried at the same depth as water and sewer, and/or proximity of other known cross bores. After identifying potential cross bores via record review, Washington Gas sends contractors to those sites who use CCTV cameras to inspect sewer laterals via either a "lateral launch" capability, or in cases of blockages or other accessibility issues, via a "push camera" from a clean out or from inside of a house. The same camera inspection process was added to the company's Operations and Maintenance Manual for new installations as well to prevent new cross bores by carefully locating and inspecting sewer facilities by camera before excavation begins, and in some instances after installations are completed.

The company also created and promotes a "Call Before You Clear" program that encourages plumbers and excavators who use mechanical equipment to clear sewer blockages to make an emergency locate request. A Washington Gas locator will respond by painting the approximate location of the gas facility, and the plumber can use those paint marks to assess whether there is the potential for a cross bore. In instances where there is cross bore potential, Washington Gas immediately responds just as it would to a Grade 1 emergency and will stay onsite until the issue is resolved. Washington Gas promotes the "Call Before You Clear" program through One Call centers, customer outreach/education and the training it provides throughout its footprint. The company has mitigated 48 cross bores to date, and damage prevention manager Scott Brown has brought Washington Gas' mitigation program to bear on his work as a member of the Best Practices committee's cross bore task team.

2018 DIRT Data will Tell us More

In a data-driven industry, a first step toward addressing a problem is having good information about the issue. As part of a larger revision of the DIRT form, CGA's Data Evaluation & Reporting Committee added a question to begin measuring instances of cross bores as it collects 2018 data.

As the committee evaluated how best to collect cross bore data, it decided the best solution was to add a simple "yes or no" question in Part C: "Did the event involve a cross bore?" Making cross bore its own root cause would take away the ability to correlate it with other root causes like lack of 811 notification or failure to pothole. DIRT Users Guide material has been written on how to fill out a DIRT report for the various scenarios by which a cross bore condition is created and/or discovered and can be found at www.cga-dirt.com.

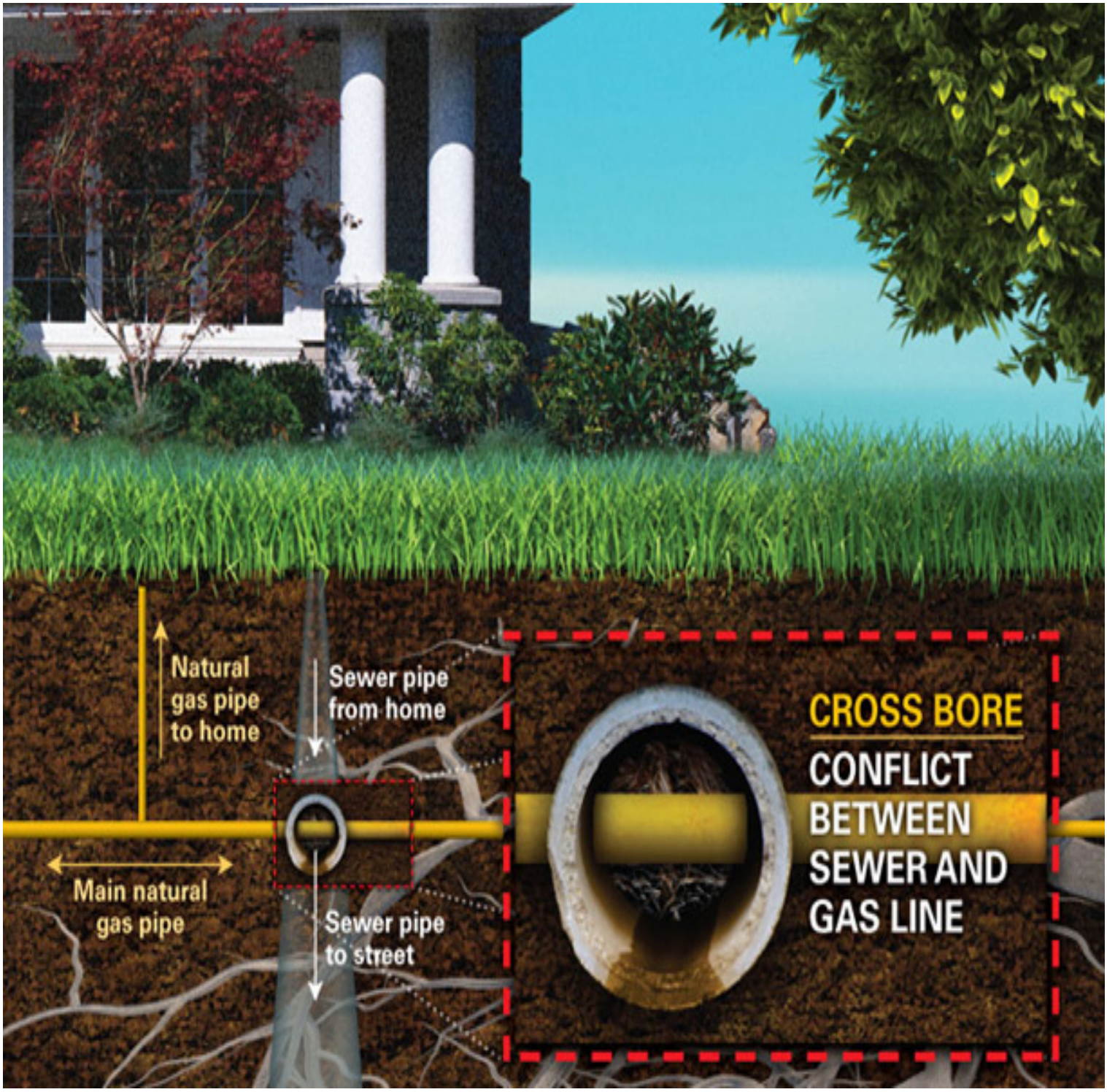
Best Practices Task Team Identifying Cross Bores Mitigation and Determination Practices

In 2014, CGA's Best Practices committee established a task team dedicated to identifying best practices for determining the presence of and mitigating cross bores. The team has worked diligently since then to incorporate input from CGA's stakeholder groups, as well as soliciting input from plumbers, and gathered information from providers of technical solutions and several CGA members who have successful cross bore mitigation programs.

At its most recent meeting in March 2018, the task team discussed how the draft language of TR2014-02 is geared mostly toward legacy cross bores, and how membership can work together to identify practices to avoid new cross bores. The team will meet again in July to discuss next steps. If you would like to get involved in the cross bore task team, contact CGA staff at support@commongroundalliance.com.

The Future of Damage Prevention

Addressing the issues surrounding cross bores requires collaborative problem solving across industries and disciplines – an expansive endeavor, but one that CGA is uniquely suited for given its members' commitment to our shared responsibility philosophy. As CGA increases efforts to measure the scope of the cross bore issue, documents potential technology solutions, and works toward a consensus-based Best Practice, the organization's integrated program structure is bringing the best minds in damage prevention together to tackle this entrenched issue. ES


Natural gas pipe to home
Sewer pipe from home
Main natural gas pipe
Sewer pipe to street
CROSS BORE
CONFLICT BETWEEN SEWER AND GAS LINE

River Road, Bethesda, Montgomery County

This is a photograph of a gas main (yellow pipe) cross-bore through a WSSC sewer main which was discovered in late 2017. Situations like these can cause catastrophic events, if not detected in a timely manner.

Odenton, Anne Arundel County

Another example of overlooking "clear evidence" prior to excavation! The gas meter was clear evidence that an underground facility was in direct proximity to the dig.

Glen Burnie, Anne Arundel County

This major communication conduit was severely damaged due to the violation of §12-126, "failure to properly locate an underground facility. " The violator was billed $150,000 by the facility owner and was fined by the Authority as well."- Non-compliance of the Title XII statute can be very costly.

Indian Head, Charles County

This is the 3rd violation for this Contractor. He did not have a "Miss Utility" Ticket and was operating mechanical equipment within 18" of a utility and ignored the "clear evidence" - a gas meter attached to the side of the residence.

MARYLAND UNDERGROUND FACILITIES
DAMAGE PREVENTION AUTHORITY
7223 Parkway Drive, Suite 100
Hanover, MD 21076
410-782-2102
www.mddpa.org

Member	Representing	Company	Contact Information
Joyce P. Brooks Exp. 9/30/2019	General Public	Somerset Group Consulting, Inc.	11470 Duley Station Road Upper Marlboro, MD 20772 jpbrooks@earthlink.net
Douglas L. Levine Exp. 9/30/2019	Maryland Association of Counties	Washington County Highways Department	601 Northern Avenue Hagerstown, MMD 21742 dlevine@washco-md.net
Walter F. Gainer Treasurer Exp. 09/30/2018	Associated Utility Contractors of Maryland	W. F. Wilson & Sons	6586 Meadowridge Rd Elkridge, MD 21075 jlarkins@wfwilson.ne
Derek Shreves Exp. 9/30/2020	Maryland Municipal League	Town of Sykesville Public Works	7003 Beachmont Drive Sykesville, MD 2784 dshreves@sykesville.net
Michael I. Jewell Exp. 9/30/2020	Underground Facility Owner	Cumberland Gas	107 Gabriel Court Smithsburg, MD 21783 mjewell@nisource.com
Charles B. McCadden Vice-Chairman Exp. 9/30/2019	Underground Facilities Owner	BGE	Pumphrey Training Center 4547 Annapolis Road Baltimore, MD 21227 Charles.Mccadden@bge.com
Erik L. Philips Chairman Exp. 9/30/2019	Underground Utility Locator	Utiliquest	8281 Bodkin Avenue Pasadena, MD 21122 Erik.phillips@utiliquest.com
Kellyn H. Ruddo Secretary Exp. 9/30/2020	One Call Centers	One Call Concepts, Inc.	13109 Fox Path Lane West Friendship, MD 21794 kruddo@managetickets.com
George E. "Bucky" Taylor Exp. 9/30/2019	Public Works Contractors Association	Taylor Utilities, Inc.	232 Westhampton Place Capitol Heights, MD 20743 taylorutilities@comcast.net
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Susan Ann Mary Stroud Deputy Director		MUFDPA	7223 Parkway Drive Hanover, MD 21076 susan.stroud@mddpa.org

2019 Authority Meeting Calendar

Miss Utility Conference Center
7223 Parkway Drive,
Hanover, Maryland

Wednesday	January 9th	Open Session & Closed Executive Session
General Assembly	January 9th - April 8th	Annapolis, MD
Wednesday	February 6th	Open Session & Closed Executive Session
Wednesday	March 6th	Open Session & Closed Executive Session
CGA Conference	March 26th - 28th	Tampa, FL
Wednesday	April 3rd	Open Session & Closed Executive Session
Wednesday	May 1st	Open Session & Closed Executive Session
Wednesday	June 5th	Open Session & Closed Executive Session
MML Conference	June 23rd - 26th	Ocean City, MD
Wednesday	July 10th	Open Session & Closed Executive Session
Tawes Crab Feast	July 17	Crisfield, MD
Wednesday	August 7th	Open Session & Closed Executive Session
MACo Conference	August 14th - 17th	Ocean City, MD
Wednesday	September 4th (?)	Open Session & Closed Executive Session
Wednesday	October 2nd	Open Session & Closed Executive Session
GCDPC	October 22nd - 25th	Ocean City, MD
Wednesday	November 6th	Open Session & Closed Executive Session
Wednesday	December 4th	Open Session & Closed Executive Session

ALL OPEN SESSIONS BEGIN AT 9:00 A.M. (Hearings on Probable Violations are held during the open portion of the meetings)
RED indicates the Authority office is Closed.

Notes