

NEW JERSEY BOARD OF PUBLIC UTILITIES

Readoption With Amendments of N.J.A.C. 14:2

Underground Facilities: One-Call Damage Prevention System

Adopted August 23, 2007

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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Underground Facilities: One-Call Damage Prevention System

Readoption With Amendments: N.J.A.C. 14:2

Repeals and New Rules: N.J.A.C. 14:2-4.3, 4.4, 5.1, 5.2, and 6

Repeals: N.J.A.C. 14:2-5.4, 5.8, 5.9, and 5.10

Proposed: April 2, 2007, at 39 N.J.R. 1232(a)

Adopted: August 22, 2007, by the New Jersey Board of Public Utilities, Jeanne M. Fox, President; Frederick F. Butler, Connie O. Hughes, Joseph L. Fiordaliso, and Christine V. Bator, Commissioners.

Filed August 23, 2007, as R. 2007 d. , with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3)

Authority: N.J.S.A. 48:2-73 et seq.

BPU Docket Number: AX07010052

Effective date: August 23, 2007

Expiration date: September 17, 2012

The New Jersey Board of Public Utilities ("Board") is herein readopting its One-Call Damage Prevention System rules, N.J.A.C. 14:2. The rules were proposed for readoption on April 2, 2007 at 39 N.J.R. 1232(a). Comments were accepted through June 2, 2007. The Board received approximately 60 comments from seven commenters. The comments, and the Board's responses to them, are summarized below.

These rules implement the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq., which requires the Board to establish and maintain a program for the protection of underground facilities used for the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, traffic control or for the transportation of a hazardous liquid subject to the Federal Hazardous Liquid Pipeline Safety Act of 1979.

The rules require an excavator, through the use of a toll-free telephone number or abbreviated dialing code 811, to provide the One-Call System, which is a single Statewide notification system, with a notice of intended excavation or demolition activities. The One-Call System operator then transmits this notice to underground facility operators located in the area of the proposed excavation or demolition activities. An underground facility operator is then required to mark the location of that facility within three business days after receipt of the information from the One-Call System operator concerning the excavator's notice.

Some of the amendments adopted herein implement amendments made to the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq. These amendments allow a "responsible contractor" to employ rented equipment operators on condition that the contractor assumes responsibility and liability for all excavation or demolition performed by the rented equipment operators. The readoption also includes amendments that reorganize and rephrase existing provisions without changing their substance, in order to make the rules easier to comprehend and comply with. As the Board has provided a 60-day comment period on this proposed readoption with amendments, it is exempt from the rulemaking calendar requirements set forth at N.J.A.C. 1:30-3.1 and 3.2, pursuant to N.J.A.C. 1:30-3.3(a)5.

Summary of Public Comments and Agency Responses:

The following persons submitted timely comments on the proposal:

1. Larry E. Bodkin, Jr. and Robert Shively; National Utility Locating Contractors Association (representing locating contracting companies ECSM, CLS, Premier Locating and UtiliQuest) (NULCA);
2. Edward Bradbury, New Jersey Pest Management Association (NJPMA);
3. Robert A. Briant, Jr., Utility and Transpiration Contractors Association of New Jersey (UTCA);
4. Jarrod C. Grasso, New Jersey Association of Realtors (NJAR);
5. Lendel G. Jones and Wayne Morgan, New Jersey American Water (NJAW);
6. Richard D. McLaughlin, J. Fletcher Creamer & Son, Inc. (JFC);
7. Jodi L. Moskowitz - Public Service Electric and Gas Company, Mary Patricia Keefe - Elizabethtown Gas Company, Tracey Thayer - New Jersey Natural Gas, and Charles F. Dipppo - South Jersey Gas Company (GDCs);
8. Sarah H. Steindel, New Jersey Department of the Public Advocate, Division of Rate Counsel (RC).

General comments:

1. **COMMENT:** We continue to fully support the basic principles underlying the One-Call Damage Prevention System rules, which implement the Underground Facility Protection Act, N.J.S.A. 48:2-73, et seq. We fully support the BPU in its efforts to ensure gas pipeline safety and damage prevention. (GDCs)
RESPONSE: The Board appreciates the commenters' support for the rules.

2. **COMMENT:** We support the proposed re-adoption of the Board's One-Call regulations, with the revisions recommended in our comments below. (RC)
RESPONSE: The Board appreciates the commenter's support for the rules.
3. **COMMENT:** The rules need to continue to focus on achieving gas pipeline safety while reflecting the practical realities associated with excavation, mark-outs and facility protection. For the most part, the proposed rules accomplish these objectives. (RC)
RESPONSE: The Board appreciates the commenters' support for the rules.

14:2-1.1 Scope and applicability

4. **COMMENT:** Although N.J.A.C. 14:2-1.1(d) states that this chapter "does not apply to an underground facility owned by a homeowner that owns only residential underground facilities, including but not limited to an underground sprinkler or an underground structure for lighting," other provisions in the proposed regulation seem to include homeowners. For example, residential construction such as new decks and other construction appears to be included in the definition of "excavate" etc. (RC)
RESPONSE: As noted by the commenter, the quoted provision does not exempt homeowners themselves from the chapter, but exempts only underground facilities owned by certain homeowners. That is, a homeowner that owns and operates a residential underground facility on its own property, such as a lighting or sprinkler system, does not have to perform markouts under the requirements for underground facility operators by virtue of operating the lighting or sprinkler system. However, homeowners are not and never have been excluded from the definition of "excavator." Therefore, if a homeowner performs excavation or demolition, the homeowner is subject to the requirements for excavators, and must call the One-Call center in accordance with N.J.A.C. 14:2-3. N.J.A.C. 14:2-1.1, and the definition of "excavator", have both been clarified to more clearly describe the responsibilities of homeowners.
5. **COMMENT:** The proposed regulations are vague as to non-routine activities conducted around a home. Planting a tree on one's property is not routine, may or may not involve mechanized equipment, and certainly requires a hole deeper than six inches. Does a homeowner or a landscaper need to call One-Call or are they exempt pursuant to N.J.A.C. 14:2-1.1(d)? (RC)
RESPONSE: Yes, a homeowner or landscaper that is planting a tree must call One-Call, because they are excavating, and as discussed above in the response to comment 4, homeowners that perform excavation are not exempt from the requirements for excavators.
6. **COMMENT:** "Routine maintenance of residential property or of a right-of-way does not require calling One-Call. However, the criteria for "routine maintenance" are very restrictive, limiting landscaping activities and maintenance for pest control purposes to activities performed with "non-mechanical equipment." (RC)

RESPONSE: The limiting of “routine maintenance of residential property...” to that performed with non-mechanized equipment is taken directly from the statutory definition of “excavation” at N.J.S.A. 48:2-75.

14:2-1.2 Definitions

7. COMMENT: "Excavate, excavation, or demolition": The definition should be expanded to include all property maintenance on residential property and in a right-of-way which does not remove earth to a depth of more than 6 inches performed with non-mechanized equipment, whether the property being maintained is residential or industrial. The majority of our meter pits, shut-off valves and curb boxes are located on residential property. Often times, a simple excavation of not more than 6 inches in depth is required in order to locate and/or access the facility. Exempting excavation of not more than 6 inches for the residential property owner without exempting the property of utilities located on the same site is inequitable. We recommend the following exemption be added to the definition:

7. Excavation on residential property or in a right-of-way to uncover an existing meter pit, curb box, or valve box that is conducted with a hand tool and performed with non-mechanized equipment which does not remove earth to a depth of more than six inches. (NJAW)

RESPONSE: The statutory definition of “excavation” at N.J.S.A. 48:2-75 limits the exception for routine maintenance to residential properties or rights of way.

8. COMMENT: "Excavate" and "Routine maintenance of residential property or of a right-of-way." In order to be excluded, an activity must be "conducted with a hand tool and without the use of mechanized equipment." This apparently excludes the use of a gas or electric lawn mower, edger or hedge clipper, among other common landscaping equipment. Although the definition of "excavation" contains a provision excluding "Routine landscaping activities with mechanized equipment that are intended to cut only vegetation, including lawn edging and de-thatching" this provision is at odds with the proposed definition of "Routine maintenance. . . ." Thus, it is unclear whether the most common routine landscaping activity, lawn mowing with a mechanized mower, is exempt from the One-Call regulations. (RC)

RESPONSE: The definition of “excavation” includes only an operation “in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced...” Therefore, activities that are intended to cut only vegetation, such as lawn edging and dethatching, are not “excavation,” regardless of whether they are performed with hand tools or mechanized equipment. To reduce confusion, the definition has been clarified to delete the specific reference to “routine landscaping activities,” as these activities are already included in “routine maintenance of residential property or of a residential right-of-way.”

9. COMMENT: The existing definition exempts routine maintenance, but the proposed amendment limits the exemption to activity that "does not remove earth to a depth of more than six inches." *Id.* This amendment could be interpreted to prevent a homeowner from planting anything more substantial than tulips without calling for a

mark-out. The Board should consider allowing homeowners to hand-dig to a depth greater than six inches without calling for a markout. A twelve-inch threshold would accommodate activities such as cultivating a garden plot or planting shrubbery. (RC)
RESPONSE: Telephone and cable television cables are often placed at a level of less than six inches. The suggested 12-inch depth could pose a significant danger to life and property. To be excluded from the definition of "excavation," a homeowner must be digging at less than six inches AND the digging must be routine. A homeowner digging *at any depth* (even less than six inches) in a location for the first time (i.e., non-routine) is excavating and must meet the requirements for notice to the One-Call center. Later plantings in the same location would be considered routine and, if they are no deeper than six inches, would be excluded from the definition of "excavation" because they are routine.

10. COMMENT: We support the proposed change in the definition of "excavate," which includes a provision for "routine maintenance of residential property for pest management purposes performed with non-mechanized equipment." However we would like to include commercial property as well so that we might be able to expedite service to such crucial accounts as hospitals, nursing homes, schools, food processing plants, etc. from having to endure health related risks any longer than they have to ("routine maintenance of residential and commercial property for pest management.....") (NJPMA)

RESPONSE: The One-Call statute exempts activities on residential properties only from the definition of excavation. The Board believes that this strikes an appropriate balance between safety and the regulatory burden for excavators. Compliance with these rules is not so burdensome or time-consuming that an exemption is needed for the examples cited by the commenter.

11. COMMENT: We support the exemption that will allow pest management professionals to perform their work without having to contact New Jersey One-Call. Real estate sales routinely require inspection for pests, such as termites, and this exception should contribute to timely transaction closings. (NJAR)

RESPONSE: The Board appreciates the commenter's support for the rules.

12. COMMENT: Taking into consideration the exception given to pest management professionals in proposed N.J.A.C. 14:2-1.2, we ask that you extend the same dispensation to homeowners and real estate professionals marketing a property for sale through real estate lawn signs. An exception for real estate signs will clarify that it is not necessary to notify New Jersey One-Call when posting "for sale" or other real estate-related lawn signs. (NJAR)

RESPONSE: In order to be excluded from the definition of "excavation," a pest management activity must be (among other things) routine. As per the definition of "routine," this means the pest management activity is performed cyclically, such that the digging is occurring repeatedly in the same location. The placement of real estate lawn signs is neither cyclical nor repetitive, and therefore poses a much greater risk of hitting an underground facility and causing damage or danger. Accordingly, the commenter's suggested change has not been made.

13. COMMENT: The definition of "Routine maintenance of residential property or of a right-of-way" limits "routine" activities to those that meet *all five* of the listed criteria, and thus appears to narrow, or even eliminate, the activities excluded from the One-Call requirements as routine maintenance. For example, an activity could be considered "routine maintenance" within the proposed definition only if it were conducted for the purpose of sprinkler system repair or locating a boundary marker. However, both of these activities are typically performed only on a sporadic, as-needed basis and would appear to be eliminated by the requirement that the activity be one that is performed "on a cyclical basis." (RC)

RESPONSE: The proposal erroneously duplicated the language regarding shallow hand digging for sprinkler systems and property boundaries both in the definition of "excavation" and "routine maintenance of residential property..." By including sprinklers and property boundaries, the definition as proposed would have limited routine maintenance of residential property far beyond the intent of the statute and the intent of the previously existing rules. This has been corrected on adoption to clarify that these are not the only activities that meet the definition of "routine maintenance of residential property...."

14. COMMENT: The definition of "One-Call incident" should be deleted as it is redundant of the definition of "Reportable accident" and is overly broad. There is no need to have separate definitions for "One-Call incident" and "reportable accident," since there is significant overlap between the two. Specifically, the definition of "reportable accident" already covers major road closures, building evacuations, and evacuation of a school, hospital, etc., as well as the catch-all "accident that is sufficiently significant to attract media attention" and "any other incident of a similar nature." Thus, we submit that the definition of "one call incident" is both unnecessary and unduly vague and should be deleted from the proposed regulations. (GDCs)

RESPONSE: The Board agrees that the two definitions have proved too confusing as proposed. The Board has consolidated the definitions upon adoption.

15. COMMENT: The definition of "One-Call incidents" appears to be overly broad. Specifically, the definition refers to conditions "caused by a condition caused by excavation or demolition," without any limitation to conditions related to damage to underground facilities. Thus, events caused by an excavation but not related to underground facilities (e.g. damage to a building or roadway caused by digging or blasting) appear to be within the scope of the term as the definition is written. (RC)

RESPONSE: The definition of "One-Call incident" has been clarified to indicate that it only applies to incidents that result from excavation or demolition involving underground facilities. In addition, the definition has been consolidated with the substance of the definition of "reportable accident" and the definition of "reportable accident" has been deleted. The proposal was intended to ensure that the basic structure of the "reportable accident" definition in the One-Call rules matched that in chapter 3, rules for all utilities. However, this has proved too confusing so the Board has modified the adoption to include all reportable events in the one definition of "One-Call incident."

16. COMMENT: Much of the proposed definition of "One-Call incidents" is vague and imposes a difficult compliance burden upon excavators and underground facility operators, who will often be hard-pressed to ascertain when a "one call incident" has occurred. For example, the definition refers to an incident that has a "significant environmental impact," yet it is unclear what types of incidents would have this level of impact. In addition, the definition refers to the "closure of a major road" and a "major disruption of traffic, business, media operations, transportation, or any other vital communication or public service." Such a broad scope will result in over-reporting of "one call incidents," as, for example, excavators routinely close lanes of traffic and cause traffic "disruptions" without actually causing any damage. We suggest adding a more reasonable definition so as to avoid over-reporting. For example, a major road could be a numbered state or federal highway and the closure could be required to last at least 20 minutes. (GDCs) (RC)

RESPONSE: A "routine" closing of lanes of traffic could rise to the level of a One-Call incident if it causes major disruption of traffic. The importance of a road closure of a road is not always correlated to the size of the road or the length of time that the closure continues. Some judgment must be left in the hands of the excavators and underground facility operators, who are familiar with the site and with the underground facilities involved. Similarly, judgment as to when an environmental impact is significant must also rest with those familiar with the site and the excavation. Finally, when in doubt, an underground facility operator should err on the side of reporting. The Board is less concerned with receiving an excessive number of incident reports than with the potential risk and dangers that could result from underreporting. Therefore, the suggested changes have not been made upon adoption.

17. COMMENT: The definition of "reportable accident" is unduly broad and vague. The Board should delete events "of a similar nature" to other listed items, in the proposed definitions of "reportable accident" and "One-Call incident." (GDCs) (RC)

RESPONSE: There is an infinite variety of situations related to excavation and underground facilities, which can result in danger, property damage, and disruption to essential communications or public services. It would not be possible for the Board to imagine and list them all. Therefore, the rule must entrust excavators and underground facility operators with some judgment regarding the determination of the seriousness of an incident. Accordingly, the suggested change has not been made. Note also that the provision to which the commenter refers has been moved into the definition of One-Call incident upon adoption.

18. COMMENT: In the definition of "reportable accident," Subsection (ii) references the evacuation of a building that is "normally open to the public." Yet there could be a minimum size or "number of persons evacuated" requirement associated with the building/event and/or there could be a requirement that (i) gas has been found to have entered the building or (ii) there has been the loss of essential utility services resulting from underground excavation damage. Otherwise, every precautionary

evacuation that occurs at every small gas station or store during a routine leak repair will be covered by this definition. (GDCs)

RESPONSE: The Board has clarified this provision upon adoption, by utilizing the standard found in the proposed definition of "One-Call incident" – that is, a building that is normally occupied by 25 people or more. Note also that the provision to which the commenter refers has been moved into the definition of One-Call incident upon adoption.

19. COMMENT: N.J.A.C. 14:2 -1.2 Definition -"Reportable accident": Item 4 of this definition should be eliminated in its entirety. The majority of the time, underground facility owners cannot accurately determine a dollar amount for damage related to one-call incidents until weeks after the event has taken place and the facts are known and generally accepted by all parties. (NJAW)

RESPONSE: While the Board agrees that estimates of property damage are sometimes difficult to make, it is important that the Board be notified if extensive property damage is likely to result from a utility-related incident. Therefore, the Board has clarified this item on adoption to indicate that an estimate of the cost of the damage is sufficient for purposes of determining whether an event is a One-Call incident. It should be noted, however, that when in doubt, a utility should always notify the Board of an event, even if it may later prove not to meet the definition of a reportable accident or One-Call incident. Note also that the provision to which the commenter refers has been moved into the definition of One-Call incident upon adoption.

20. COMMENT: In (iv) in the definition of "reportable accident," we recommend that the phrase "media attention" be narrowed to "broadcast media attention of which the underground facility operator is aware or reasonably should be aware." Small newspaper articles may be written concerning every 911 call, and the publication of these articles may be unknown. Limiting reporting in the manner suggested above will help to avoid over-reporting and inadvertent violations of the regulations. (GDCs) (RC)

RESPONSE: This provision has been clarified to apply only to situations where the incident attracts media personnel to the site of the incident, or media inquiries at the time of the incident. The Board did not intend to require reporting of an incident that is merely mentioned in a newspaper three weeks after it occurs. However, as noted above, if a utility is in doubt about whether to notify the Board of an incident, it is always best to err on the side of safety and do so. The Board is aware that in some cases it may be difficult for an underground facility operator or excavator to be sure as to whether an occurrence will have a significant impact on community or public safety functions. In such a case, the notification requirements should be followed. It is better to have an unnecessary notification than a notification failure which could cause danger or major public disruption. And, if the occurrence turns out not to have the expected impact, there will be no harm caused by the notification.

21. COMMENT: With respect to the definition of “underground facility,” N.J.A.C. 14:2-1.2, we object to the inclusion of “property that runs between the meter located on the customer’s premises and an underground facility operator’s facilities, regardless of who owns the property” We have no control over, and no knowledge of, facilities that are not owned by the utility, and thus will have no meaningful ability to comply with rules applicable to this type of “underground facility.” The expansion of the definition is beyond the legislative intent and fails to understand the difference between controlling an underground facility and controlling the energy or product that flows through the facility. Utilities are not able to accurately locate customer owned facilities; since utilities do not have prints, measurements, or other as-built records of these systems. Large institutions have extensive customer owned underground facilities that are not known to utilities. Requiring utilities to mark customer owned facilities would result in increased risk of damage to the customer owned facilities and negative impact upon public safety. In addition, utilities and ratepayers would be subject to liability costs beyond the control of the utility. It is recommended that the prior language remain the same. (GDCs)

RESPONSE: The phrase to which the commenter objects is merely illustrative of the first sentence of the definition of “underground facility operator”. Under the One-Call statute, an underground facility operator is a person “owning or operating, or controlling the operation of, an underground facility.” See N.J.S.A. 48:2-75. Therefore, regardless of whether this specific phrase (i.e., “*property that runs between the meter located on the customer’s premises and an underground facility operator’s facilities, regardless of who owns the property*”) is included in this definition, the result under the One-Call rules is the same. If a utility delivers metered service, it controls the operation of the utility line up to (and often including) the meter, regardless of who owns the line. This is evidenced by the utility’s authority to prosecute any person who taps into this line to divert utility service. Since the electric utility controls the line, it is the underground facility operator and is responsible for marking the facility under the One-Call program. This is also a sensible policy because residential utility lines on the utility’s side of the meter generally have more capacity than customer-controlled utility lines on the customer’s side of the meter. Therefore, the risk posed by an excavator hitting the utility-controlled line is much greater than the risk for a smaller, customer-controlled line behind the meter. This distinction applies to both residential and non-residential facilities. If a large commercial utility customer has installed underground utility lines on its side of the meter, the customer is responsible for locating those lines, not the utility. To clarify this issue, the phrase “property that runs between the meter located on the customer’s premises and an underground facility operator’s facilities, regardless of who owns the property” has been deleted from the definition upon adoption, and this concept has been relocated in N.J.A.C. 14:2-4.2. N.J.A.C. 14:2-4.2(b)1 contains the basic concept of a non-owner that nevertheless controls an underground facility operator. In addition, new (c) has been added upon adoption to clarify the concept of control of an underground facility operator.

14:2-2.2 Designation and term of System operator

22. **COMMENT:** The proposed regulations require compliance with all applicable rules of the New Jersey Department of the Treasury when the Board advertises the position of State One-Call operator. A similar amendment should be made to the provision on selection of the winning bidder. (RC)

RESPONSE: The Board agrees and the suggested change has been made.

23. **COMMENT:** Proposed N.J.A.C 14:2-2.2(d) retains the current requirement that the Board select "the applicant that will best operate the system." This provision appears to contemplate selection of the winning bidder without regard to price. Under *N.J.S.A. 54:34-12(g)* (*editor's note – the correct citation is 52:34-12(g)*), "[w]henver advertising is required. .. award shall be made ... to that responsible bidder whose bid ... will be most advantageous to the State, price and other factors considered..." Proposed N.J.A.C. 14:2-2.2(d) should be amended to make it consistent with the statutory requirement to consider price along with other factors in selecting the winning bidder. (RC)

RESPONSE: The provision has been clarified to indicate that, in selecting a System operator, the Board will adhere to Treasury requirements.

14:2-3.1 Notice of intent to excavate - timing

24. **COMMENT:** Proposed N.J.A.C. 14:2-3.1(b) allows for a One Call Notification to be received no later than three business days and no longer than ten business days prior to the excavation or demolition, whereas proposed N.J.A.C. 14:2-4.2 limits the facility operators to ONLY three business days for marking ALL notifications. N.J.A.C. 14:2-3.1(b) and 14:2-4.2 should be modified to allow excavators the flexibility to specify their work start date instead of the One-Call Center computer assigning an automatic 3 day due date to each notice. The system treats all notifications with the same level of urgency regardless of the actual needs or intentions of the caller. This creates a condition of competing priorities for the locators when in reality one does not exist. We believe that there are a sizeable number of notifications where the callers have no need or intention of excavating within 3 days, and if given the opportunity they will sensibly choose a start data that is relevant to their need. Such a change will greatly enhance public safety by eliminating the arbitrary and colliding priorities placed on the locator community through the automatic 3 day requirement. This change will "reduce cost" to the rate payers of NJ by eliminating the unnecessary expense of rushing to complete jobs where such need does not exist. It will further reduce unnecessary cost by eliminating re-markings of the same jobs because of stale markings. Such a change creates a balanced and sensible approach to force-load management which is essential for the "safety of the public."..., Safety is an issue - especially during inclement weather days where arbitrary 3 day deadlines do not carry forward. Most importantly, incorporating this change will in no way negatively affect those excavators that need to excavate within 3 days, since they will always be able to choose the 3 day due date. We will be happy to provide data to support the fact that currently a significant number of

excavations do not occur at the 3 days point; or for that matter for many days thereafter. (NULCA)

RESPONSE: Please see comment 25 below.

25. COMMENT: We request that the BPU consider adding language to the regulations that would permit the use of “written” agreements that would permit the excavator and the underground facility operator to negotiate and potentially modify certain otherwise-applicable requirements based on the project scope and schedule. For example, in the case of a major, time-consuming excavation, some of the mark-out work could be phased so that the parties could focus on the task at hand without worrying about running afoul of technical requirements. This would allow for flexibility when scheduling work, maintenance of the utility markings, and damage prevention. (GDCs)

RESPONSE: The phasing of markouts is possible under the existing rules, by dividing the project area into separate excavation sites for the purpose of markouts. Furthermore, the change requested by the commenters is contrary to the One-Call statute, which states at N.J.S.A. 48:2-80a(2) that markouts must be done within three business days. The commenters’ suggestion would result in a vast variability in the timing of markouts, making it impossible for the Board to monitor compliance and ensure safety. Finally, the suggested scheme could result in situations where a small excavator is unable to negotiate a reasonable agreement with a large underground facility operator regarding the timing of the markout.

14:2-3.2 Notice of intent to excavate – contents, perimeter marking

26. COMMENT: N.J.A.C. 14:2-3.2 is being proposed to minimize the amount of unnecessary mark outs by introducing “white lining” in certain situations. We believe the change can go even further. Currently there are a sizeable number of notices that are so large in scope that they stretch the limits of the locator community’s ability to mark them out within 3 business days. Many states have placed limitations on the size of notices, either by distance, scope, street block or grid. Therefore we suggest that NJ adopt language that encourages voluntary cooperation by excavators to limit such notices to what the excavator can ‘reasonably’ complete within 10 work days. This would ensure that the significant labor resources expended to initially mark (and subsequently re-mark) these jobs are not wasted on work that can’t be performed in the allotted time or require many updates. Today these jobs result in enormous unnecessary expense to the state rate payers. We believe such voluntary cooperation from the excavating community will be beneficial to the state rate payers and will very much enhance damage prevention. (NULCA)

RESPONSE: The rules, as proposed and adopted, emphasize that excavators should voluntarily limit the size of sites. The Board believes that this is sufficient to elicit the voluntary cooperation designed by the commenter, and that the suggested 10-day limit is unnecessary. Therefore, the suggested change has not been made.

27. COMMENT: To better facilitate clearly defined excavation scopes, it is recommended that white paint be required for “spot excavations” *[see N.J.A.C. 14:2-

3.2(b)6.iii and 14:2-3.2(b)6.iii(c)]* and that “spot excavations” be defined as “planned excavations for trees, poles, signs, valves, and other planned non-environmental soil borings.” We recommend the addition of a definition for “spot excavation.” Specifically, we recommend the following definition: “Spot Excavations: planned excavations for trees, poles, signs, valves, and other planned non-environmental soil borings.” (GDCs)

RESPONSE: It is not clear how the commenters’ suggested changes would better facilitate clearly defined excavation areas. The suggestion seems to differ from the rules as proposed only in that the excavator would be mandated to use white perimeter marking in specified cases identified as “spot excavations”, whereas the rules merely encourage white marking for these sites. The Board believes that encouraging but not mandating white paint for small excavation sites is the best way to minimize labor and unsightly paint marks while maximizing the underground facility operator’s ability to identify small markout sites. However, at N.J.A.C. 14:2-3.2(d), the rules require excavators to limit ALL sites to the minimum size necessary to safely accommodate the planned excavation or demolition. Therefore, the rules already address the issue of minimizing markouts.

28. COMMENT: N.J.A.C. 14:2-3.2(c) and (d). There are occasions when field conditions which are not discovered until excavation begins would require a change in location for excavation. A limited mark out request might result in work stopping, additional mark out requests and an additional visit from the operators. The examples in the amendment should remain for only small excavations as indicated in subsection (c). (JFC)

RESPONSE: By requiring under N.J.A.C. 14:2-3.2(d) that excavators limit sites to the minimum size necessary to safely accommodate the planned excavation or demolition, the Board believes that the rules adequately balance the needs of excavators, underground facility operators, and public safety.

14:2-3.3 Excavators - onsite requirements

29. COMMENT: N.J.A.C. 14:2-3.3(a). Operators should respond directly to the excavator using the contact information in the markout request if they do not own, operate or control any underground facilities on the site that require marking out. (JFC)

RESPONSE: The Board has not adopted the provision to which the commenter refers. Please see the response to comment 47 below.

30. COMMENT: In N.J.A.C. 14:2-3.3, subsections (d) and (d) (*Editor’s note: error in original*) could be eliminated, and the words "shall ensure that each underground facility is adequately protected from freezing and traffic, and" could be deleted from subsection (e). (RC)

RESPONSE: The commenter is apparently referring to proposed N.J.A.C. 14:2-3.3(c) and (d). These two provisions have been deleted and consolidated with proposed (b), which is recodified upon adoption as N.J.A.C. 14:2-3(a). The redundant phrase identified by the commenter has been deleted upon adoption.

31. COMMENT: The proposed N.J.A.C. 14:2-3.3(f) is beyond the facility operators' authority. Facility operators do not have the legal authority to enforce State code on third parties. In addition, such a requirement could subject the facility operator to liability and result in additional costs to ratepayers. It is recommended that the proposed code be modified to have the facility operator notify the excavator of its concerns and notify the appropriate regulatory governmental authority that can take appropriate action, including having the excavator stop work and take corrective action. (GDCs)

RESPONSE: N.J.A.C. 14:2-3.3(f) (recodified upon adoption as (d)) does not require that underground facility operators enforce State code. The provision has been clarified upon adoption to indicate that the representative of the underground facility operator has the authority to suspend excavation or demolition in the event that the representative believes that conditions are unsafe.

32. COMMENT: N.J.A.C. 14:2-3.3(f). Any suspension of work should require a written direction which states the basis for that direction. (JFC)

RESPONSE: In cases of emergency, it is important that an underground facility operator representative have the authority to verbally direct suspension of excavation or demolition. N.J.A.C. 14:2-3.3(f) (recodified upon adoption as (c)) has been clarified upon adoption to provide for this, and to require a written follow-up in cases where the suspension directive is verbal.

14:2-3.4 Responsible contractors

33. COMMENT: N.J.A.C. 14:2-3.4(b). The logbooks and records should be kept for one year instead of seven. (JFC)

RESPONSE: The seven-year requirement is consistent with recordkeeping requirements for underground facility operator for markouts, found in the existing rules at N.J.A.C. 14:2-5.9(a) and in this adoption at N.J.A.C. 14:2-4.3(a). Retaining records is not burdensome or time-consuming.

34. COMMENT: N.J.A.C. 14:2-3.4(c)3 and 4. The excavator who calls for a markout for excavators with rented, operated equipment accepts responsibility and liability. There is no need for further calls with details of the rented operated equipment and its time of use. N.J.A.C. 14:2-3.4(d). The same comment applies to subsections 3.4(c) 3 and 4. (JFC)

RESPONSE: It is important that clear records be kept regarding who is working on a site at any time, and who is acting as the responsible contractor. Otherwise, an excavator and a responsible contractor may each think the other is responsible for meeting the One-Call requirements, with the possible result that neither one fulfills the requirements. This could lead to dangerous conditions, as well as possible later lawsuits. Therefore, the rule is designed to ensure that everyone involved is clear on who is responsible for compliance with the rules, and who is liable for any problems .

35. COMMENT: N.J.A.C. 14:2-3.4(e) adds to the calls to the Center. (JFC)

RESPONSE: The number of calls to the One-Call center should be the same, as without a responsible contractor, the numerous excavators on a site would each have to notify the center. While no increase in the number of calls is expected, the rule requirements will clarify the chain of command on a site, and the locus of responsibility and liability.

36. COMMENT: N.J.A.C. 14:2-3.4(g). The continuous visual monitoring of hand digging is not necessary and is beyond the statutory definition of "Excavator" which provides for on-site direction not continuous visual monitoring. (JFC)

RESPONSE: The Legislature tasked the Board with developing the rules to implement the One-Call statute. With that delegation comes the duty to exercise the Board's discretion in accordance with the Board's experience and expertise. Based on this experience and expertise, the Board believes that continuous visual monitoring of hand digging is necessary for safety, and it is clearly within the meaning of the term "on-site direction."

37. COMMENT: N.J.A.C. 14:2-3.4(h). This proposed amendment adds unnecessary requirements given the acceptance of responsibility and liability and the statutory definition as to the contractor's "on-site direction." (JFC)

RESPONSE: The requirements for locating a daily logbook and list of rented equipment operators onsite are necessary in order to allow for effective monitoring of compliance with the requirements for responsible contractors.

14:2-3.6 Excavators - incident and damage reporting

38. COMMENT: N.J.A.C. 14:2-3.6(a). Would sewerage be considered a "hazardous liquid"? (JFC)

RESPONSE: No it would not. The One-Call statute defines an underground facility as one that transports a "hazardous liquid regulated pursuant to the "Hazardous Liquid Pipeline Safety Act of 1979" (49 U.S.C. app. 2001 et seq.), but does not include storm drains or gravity sewers." First, sewage is not a hazardous liquid under the Pipeline Safety Act. Second, the vast majority of sewage in New Jersey is transported through gravity sewers, which are themselves exempt from these rules.

39. COMMENT: Proposed N.J.A.C. 14:2-3.6 states that an excavator is required to report damage incidents "to the One-Call center... and/or the appropriate representative of the underground facility." The rule could be interpreted as giving the excavator the option of contacting *either* the One Call center *or* the underground facility operator. It would be more appropriate to require the excavator to contact the One-Call center in any event, and to contact the underground facility operator if its identity can be ascertained. Unless reporting to underground facility operators is mandatory, underground facility operators will not be able to comply with proposed new reporting requirements for underground facilities operators. (RC)

RESPONSE: Please see the response to comment 40 below.

40. COMMENT: For N.J.A.C. 14:2-3.6(a), the order of phone calls should be changed so that the “appropriate representative of the underground facility operator” is called first and immediately; the underground facility operator is capable of providing the quickest and most effective response. Damage to a natural gas pipeline can be a serious, life-threatening event. Even if no gas is released at the site of the damage, there may be a release at another point in the affected line due to pull-out. Gas company emergency responders are the primary properly-trained and equipped resource to address the possible migration of gas and stop the flow in an appropriate manner. To delay the dispatch of gas company personnel by mandating that other parties be called first unnecessarily jeopardizes safety and property. While a call to 911 will typically be forwarded to the gas company, there is often a delay associated with this transfer. Thus, the One-Call center reference should be deleted. (GDCs)
RESPONSE: N.J.A.C. 14:2-3.6(a) has been modified upon adoption to clarify that the excavator must call the One-Call center only if it cannot reach the underground facility operator. However, it is important that the excavator call 911 prior to any other calls. The 911 call activates many more responders than the gas utility, any or all of which may be needed just as quickly to address injuries, fires, evacuations or other conditions at the site of the emergency.

41. COMMENT: Proposed N.J.A.C. 14:2-3.6(d) would require excavators to report unsafe conditions to the One-Call Center. This requirement imposes a reporting burden on excavators, with which it will be difficult to comply, since (i) the excavator may not know when an underground facility is “shallower than required by law” and (ii) the language pertaining to the “potential to pose a danger to health and safety” is overly broad. Excavators may not accurately report, thereby creating additional work and costs for facility operators. In addition, the claim of shallow facilities will be made in all damage cases. Changes to grade level and utility cover, after the utility has installed its facilities in accordance with then-existing regulations, are beyond the utilities’ control. Re-installing facilities in those cases would be expensive and result in additional costs to ratepayers. It is recommended that this requirement be eliminated or, at a minimum, clearly and precisely defined to permit excavators to properly report safety concerns. Facility operators should be able to hold excavators accountable for improper reporting. (GDCs)
RESPONSE: Please see the response to comment 43 below.

42. COMMENT: N.J.A.C. 14:2-3.6(d) should either be eliminated or altered to reflect what the Board intends to do with the dangerous condition reporting forms, as well as to define “shallower than required by law” as there is no clear understanding by excavators of the appropriate depth for the various types of underground facilities. (NJAW)
RESPONSE: These forms are intended to bring unsafe conditions to the attention of underground facility operators in order to assist them in monitoring their underground facilities. In addition, Board staff may in some cases use the forms to assess compliance with the One-Call program by a particular underground facility operator, or to aggregate data so as to evaluate the effectiveness of the program overall.

Please see the response to comment 43 below for additional discussion of this provision.

43. COMMENT: Proposed N.J.A.C. 14:2-3.6(d). This proposed amendment would place an unreasonable burden and potential liability on an excavator to make a determination as to the potential for an underground facility to pose a danger to health and safety. (JFC)

RESPONSE to comments 41 through 43: The intent of this requirement was to assist underground facility operators in monitoring the condition and safety of their facilities, by utilizing excavators to provide up-to-date, onsite information to underground facility operators. However, the commenters are correct that it would likely be impossible for excavators to be aware of the legally required depth of the many underground facilities with which they come in contact. There are different depth requirements for different types of underground facilities, depending on whether the facility carries water, natural gas, electricity, telecommunications, etc. Further, depth requirements can vary based on the size and type of facility. A high-capacity main that carries natural gas is governed by a different set of legal requirements from those that would govern a small gas service line that runs from the street to a single family home. Additionally, the underground facility's configuration or material will affect its legally required depth. For example, a hydrostatic electric line is not required to be buried as deeply as other electric lines, because the electric conducting material in such a line is encased in a special insulating material. Finally, the configuration of surface feature can affect the legally required depth of an underground facility. An example of this is when an underground facility passes under a railroad track, or under another underground facility. Because of this wide variety in legal requirements, excavators generally cannot know the legally required depths of all of the underground facilities they encounter in their work, because they typically do not have access to all of the codes and laws that govern the many underground facilities with which they deal on a daily basis. Even if these codes were readily available to them, excavators rarely have the time or expertise to read, understand, and learn these requirements. Therefore, the rule has been modified upon adoption to allow the excavator to apply a standard of best judgment regarding whether an underground facility is unsafe.

Further, the Board agrees with the commenter that the mandatory reporting proposed is likely to result in attempts by some underground facility operators to evade responsibility for improper placement of underground facilities by blaming an excavator for failing to report it. In addition, the Board agrees with the commenters that an excavator may over-report, for fear of being held liable for failing to recognize an impermissibly shallow underground facility. Therefore, the rule has been modified upon adoption to make the reporting discretionary on the part of the excavator. The Board believes that excavators can provide a significant benefit to underground facility operators and to public safety by reporting unsafe conditions that they discover during the course of their work.

14:2-4.2 Underground facility operators – basic requirements

44. COMMENT: N.J.A.C. 14:2-4.2(a)4. Are there suggested means to protect and preserve the marks? (JFC)

RESPONSE: Because of the vast variability of sites and site conditions, the Board leaves the means of protection and preservation of marks to the discretion of the excavator or responsible contractor. However, Board staff have observed various methods, including recording the location of the marks with pictures, measurements and other documents. One way to prevent the need for extensive documentation of marks is to limit the size of the site to the extent possible, perhaps by performing the excavation in sections or phases. This reduces the time between the markout and the excavation, and thus helps limit the work required to protect and preserve multiple marks for extensive time periods. If there is any doubt about the location of previously placed marks, the excavator or responsible contractor should call the One-Call center and request another markout.

45. COMMENT: Proposed N.J.A.C. 14:2-4.2(b)(2) requires that Underground Facility Operators log onto the One-Call Center's "online positive response system" to indicate that the operator has no facilities at the site transmitted to it for mark out. Yet, N.J.A.C. 14:2 does not provide any specifics for establishing this system, nor has there been any discussion regarding this new requirement with Underground Facility Operators. We urge the Board to take a cooperative approach to establishing this arrangement to ensure the system is practical and can be integrated to enable electronic reporting/communications. (GDCs)

RESPONSE: Please see the response to comment 47 below.

46. COMMENT: Proposed N.J.A.C 14:2-4.2 would require underground facility operators which do not have any facilities within an excavation site to log on to the online One Call "positive response system" and indicate that they have no facilities in the area. However, this provision does not state what action, if any the excavator is required to take if there are one or more underground facility operators that have neither performed a markout nor indicated that they have no facilities in the area, *i.e.*, whether they are entitled to rely on the absence of markouts, or whether they are obligated to follow up with the relevant underground facilities operator. This should be clarified in the rule. (RC)

RESPONSE: Please see the response to comment 47 below.

47. COMMENT: N.J.A.C. 14:2-4.2(b). It is necessary to make sure that gas distribution systems are compatible with the One-Call's systems so that it will be possible to "electronically log onto the One-Call Center's online positive response system" and provide the requisite information electronically via appropriate information transfer protocols. (GDCs)

RESPONSE: The provisions relating to the positive response system have not been adopted because the Board has encountered difficulties in developing the system, which prevent it being usable in a timely fashion. Instead, the Board has retained the requirement found in the previous rules at N.J.A.C. 14:2-6.1(b), which requires an underground facility operator with no facilities onsite to make a

reasonable effort to so notify the excavator (see N.J.A.C. 14:2-4.2(b)2). The Board expects to continue working towards developing a positive response system in the future.

48. COMMENT: In N.J.A.C. 14:2-4.2(d), the term “shall” in the first sentence should be changed to “may.” (GDCs)

RESPONSE: Underground facility operators own and operate their facilities. Presumably they know better than excavators how the facilities should be supported. Therefore, the suggested change has not been made.

49. COMMENT: Excavators’ responsibilities to protect underground facilities should be consistent with Occupational Safety and Health Administration (“OSHA”), Part II Department of Labor, 29 CFR Section 1926 Subpart P - Excavation, including those aspects of 1926.651(b). Accordingly, N.J.A.C. 14:2- 4.2(d) should be changed from “shall provide” to “may provide,” since it is the responsibility of the excavator, not the underground facility operator, to protect near-by underground facilities. Facility operators may provide guidance on supporting their facilities. However, OSHA requires the excavator to design and utilize appropriate support methods. (GDCs)

RESPONSE: The Board’s rules are not inconsistent with those of OSHA, but are somewhat more stringent. This is fully within the Board’s authority, and is justified by the unique conditions in New Jersey, which is the most densely populated state in the country, has extremely varied soil and geological conditions, and also has one of the longest histories of development, particularly industrial development. These factors all contribute to the potential for excavation to discover or result in dangerous conditions. Therefore, the commenters’ suggested change has not been made. The only change made to N.J.A.C. 14:2-4.2(d) is the correction of a cross-reference to reflect a recodification on adoption.

50. COMMENT: Commercial excavators should have written procedures on excavating, supporting underground facilities and emergency action plans in case of damage to underground facilities and particularly with respect to damage to gas and hazardous liquid facilities. (GDCs)

RESPONSE: The Board agrees that such procedures could be useful, and underground facility operators might want to consider collaborating to develop them. In the meantime, as discussed above in the response to comment 48, each underground facility operator, as the entity most familiar with its own facilities, is responsible for providing this information to excavators.

51. COMMENT: Dispatching personnel to perform an emergency mark-out when the facility operator does not have underground facilities within the requested scope is wasteful and neither an effective nor efficient use of utility resources. It is recommended that N.J.A.C. 14:2-4.2(e) be modified and include wording “as appropriate” to ensure an effective and efficient response to an emergency mark-out request. (GDCs)

RESPONSE: Please see response to comment 52 below.

52. COMMENT: In N.J.A.C. 14:2-4.2(e), the underground facility operator's "immediate" dispatch of personnel to the site should be done only if necessary. Thus, we would request that the term "if necessary" be added as a qualifier to the language in subsection (e). (GDCs)

RESPONSE: The provision has been clarified to indicate that an underground facility operator that does not have facilities on the excavation site need not appear but must notify the excavator that they have no facilities on the site. It is imperative that, in an emergency, any underground facility operator that has any underground facilities on the excavation site must immediately provide a markout. And, any underground facility operator that does not have facilities on the site must immediately notify the excavator of that fact. The commenters suggest terms such as "requested scope," "if necessary" and "as appropriate." This language has not been added to the rules. It is not sufficiently clear and specific to ensure immediate response, and leaves too much discretion in the hands of the underground facility operator that receives the emergency markout request. Instead, the provision is clarified upon adoption to specifically require that an underground facility operator that has no facilities at the emergency site must so notify the excavator, and if for any reason the underground facility operator cannot reach the excavator, the operator must send a representative to the site.

14:2-4.4 Underground facility operators – accidents and emergencies

53. COMMENT: N.J.A.C. 14:2 - 4.4(a): We recommend that the word "supervisory" be replaced with the word "qualified." We believe this would more accurately reflect the intent of this section. We ensure that sufficient employees are available 24 hours a day, 7 days a week to respond to reports of accidents, damage and emergencies. However, those employees, while qualified to respond, are not always at the supervisor level according to our internal human resources policies. We feel it is sufficient that the responding employee be "qualified" to assess the situation and respond accordingly, but not necessitate that the employee be at a supervisory level. (NJAW)

RESPONSE: Please see the response to comment 54 below.

54. COMMENT: N.J.A.C. 14:2-4.4(a) requires that the names and titles of the supervisory employees be submitted as part of a utility's quarterly report. We recommend the elimination of this provision and encourage the Board to instead utilize the 24 hours a day, 7 days a week time critical phone numbers that are provided by each utility to identify and/or reach the on-call employee responsible for responding to One-Call requests. (NJAW)

RESPONSE: The One-Call staff is not aware of the "time-critical phone numbers" to which the commenter refers. Furthermore, the One-Call rules govern over 700 underground facility operators, only a handful of which are utilities. Therefore, this provision is necessary to ensure that One-Call staff can contact any underground facility operator when they need to. The Board agrees that the supervisory status of an employee may not be related to their qualification to respond to an emergency and has therefore modified the provision as suggested by the commenters.

55. COMMENT: Under the proposal, non-utility underground facilities operators would become subject to the same reporting requirements as BPU-regulated utilities. The Board's existing accident reporting regulations may not be well suited to the purposes of the Underground Facilities Protection Act. The existing provisions require reporting and tracking of all "reportable accidents," including many that have no relation to underground facilities damage incidents. Although the BPU may not have intended to subject non-utility underground facility operators to the full scope of the Board's accident-reporting requirements, this is the literal reading of the BPU proposal. A better approach would be to leave the existing accident reporting requirements "as is" and create a single system for emergent reporting of significant events *related to underground facilities damage incidents*. The definition of "One-Call incidents" could be amended to include all of the types of events for which the Board wishes to receive emergent reports. (RC)

RESPONSE: Proposed N.J.A.C. 14:2-4.4 was intended to require that underground facility operators comply only with the procedural requirements of N.J.A.C. 14:3-6.4 (accident reporting for utilities), and only in relation to excavation or demolition. An underground facility operator would not, as the commenter suggests, be required by N.J.A.C. 14:2-4.4 to report accidents to One-Call personnel if the accident is unrelated to excavation or demolition. Such a requirement would be beyond the scope of the chapter as set forth at N.J.A.C. 14:2-1.1, which clearly states that the chapter implements the One-Call statute, which of course applies only to activities relating to excavation and demolition. The section has been clarified accordingly at N.J.A.C. 14:2-4.4(c).

56. COMMENT: Since the definition of "One-Call incidents" substantially overlaps with the expanded definition of "reportable accidents," two reports might be required for some occurrences. (RC)

RESPONSE: The Board agrees that there is a great deal of overlap and has therefore consolidated the terms "reportable accident" and "One-Call incident" upon adoption. However, the rules for all utilities, N.J.A.C. 14:3 (chapter 3), still contain provisions relating to reportable accidents. Therefore, if an underground facility operator is also a public utility that is subject to chapter 3, there may be an event involving an underground utility facility which meets the definition of both a "reportable accident" and a "One-Call incident." In such a case, both the appropriate division of the BPU (e.g., the Water Division, the Energy Division, etc.) and the Board's One-Call staff must receive prompt notice of the situation, since each must address a different aspect of the problem. Therefore, N.J.A.C. 14:2-4.4 has been clarified at (e) to indicate that in these cases two reports would be required for the same occurrence.

57. COMMENT: Starting the reporting period "clock" at the time of incident notification will often result in less than an hour allowance after determination that the incident is a "Reportable Accident." Taking the notification information, dispatching a crew, traveling to the site, ascertaining the situation and taking initial action to cooperate

with emergency officials and protect lives and property will often exceed the allotted time. Subsequent actions to coordinate emergency response activities and direct needed resources to effectively protect the public must be given priority over administrative notifications. Accordingly, it is requested that the “reportable accident” reporting requirement be maintained as currently codified in the regulations. We strongly oppose the 1-hour notification requirement, and recommend that N.J.A.C. 14:2- 4.4(e) give the utilities at least two hours to provide notification of a reportable accident. (GDCs) (NJAW)

RESPONSE: N.J.A.C. 14:2-4.4(e) requires only a quick telephone call to alert the Board of the basic information that a reportable accident or One-Call incident has occurred. This can easily be done by administrative personnel without delaying the operator’s emergency response. Further, it is not necessary for the underground facility operator to dispatch a crew or fully assess the situation prior to calling the Board. If the operator discovers, after assessing the situation, that the problem was in fact not a reportable accident or a One-Call incident, the operator can easily call the Board again to inform them of that fact. The rule has been modified upon adoption to clarify the minimal nature of the information required.

58. COMMENT: N.J.A.C. 14:2-4.4(g) - requiring that natural gas and hazardous liquid operators report damage to their facilities on a weekly basis –should be eliminated. This requirement is inconsistent with N.J.S.A. 48:2-80(2)(c), which only requires that the facility operator provide a damage report on a quarterly basis. A weekly reporting requirement is excessive, increases costs with no benefit and, due to the short reporting timeframe, is likely to result in the provision of inaccurate information. In addition, under the proposed regulations, the “hits report” must be submitted by the close of business on Friday of a given week. This may pose problems if an incident occurs at 4:00 pm on Friday, as the “hits report” would then need to be submitted within an hour, while the underground facility operator is still dealing with the incident itself. Given the already-existing extensive reporting requirements, we request that the weekly “hits report” requirement be deleted. We fully support, and comply with, the statutory quarterly reporting requirement. (GDCs)

RESPONSE: The Board agrees that underground facility operators need time to prepare these hits reports. Accordingly, the rule has been modified upon adoption to require that the hits report be submitted biweekly rather than weekly, and the report will be due by the close of business on the Tuesday following the biweekly period covered by the report. However, the hits report requirement has not been deleted from the rules, as prompt reporting of damage results in quicker investigations while the facts are still fresh in all parties’ minds. Ultimately, this results in earlier and better resolution of problems and conflicts.

59. COMMENT: N.J.A.C. 14:2-4.4(g) - We support electronic filing of quarterly reports, which will enable the BPU to receive the reports, and the information contained therein, in a user-friendly and searchable manner. (GDCs)

RESPONSE: The Board is currently working to develop a database that will enable staff to receive and handle quarterly reports. When the database is complete, the Board will notify the public that reports may be submitted electronically. Until that

date, paper reports are required, although an underground facility operator is welcome to submit an additional electronic copy of a report.

14:2-5.1 General markout provisions

60. COMMENT: With respect to N.J.A.C. 14:2-5.1, facility operators are not able to effectively mark wet surfaces with paint. Facility operators should be allowed to work with excavators to arrive at a mutually acceptable resolution to this problem. We request that a new subsection (d) be added to make clear that markouts using paint cannot be done in inclement weather. We also suggest the addition of a definition for “inclement weather,” as follows: “Inclement weather consists of weather conditions such as rain, snow, sleet and/or ice that adversely affect ground conditions.” (GDCs)
RESPONSE: While the Board is aware that some weather conditions can make marking out excavation sites difficult, the commenters’ suggested change has not been made. If weather or other site conditions may make paint difficult to use or to see, the solution is not to omit the paint, but to use stakes or flags in addition to the paint. This will ensure maximum visibility and safety. N.J.A.C. 14:2-5.2 has been clarified to indicate that this is an appropriate use of stakes or flags.

61. COMMENT: To better facilitate damage prevention, we recommend that design mark-outs be permitted so that facility operators may coordinate with design firms and excavators prior to scheduled work to provide prints or facility locations, thereby enabling designers/excavators to better plan and locate their new facility to avoid existing utility facilities early in the design process. Thus, it should be left to the discretion of the underground facility operator as to (i) whether it participates in design markouts and (ii) how the design markouts are performed. (GDCs)
RESPONSE: The Board agrees that designers/excavators should work with utilities early in the design process to locate existing utility facilities and plan future ones, so as to maximize efficient and safe construction of buildings and underground facilities. However, these goals are better met through face-to-face meetings between planners and representatives of underground facility operators, rather than through the One-Call program. Furthermore, these planning goals are not within the Board’s mandate under the One-Call program. Finally, it has been the Board staffs’ experience that in the long run design markouts can cause more problems than they solve, in that they can give rise to arguments over liability for inaccurate markouts, and confusion on the part of excavators as to which markout is the design markout and which is the “real” markout. The New Jersey Utilities Association (NJUA) and the New Jersey Society of Municipal Engineers (NJSME) are working together on a program for mutual cooperation to address the need for early involvement of underground facility operators in planning of future construction. The Board believes that this is a more appropriate avenue to address this issue.

14:2-5.2 Specifications for marks used in markouts

62. COMMENT: To eliminate waste and reduce cost, it is recommended that stakes do not contain the phone number of the facility operator or the one call center. Flags are

required to be used in conjunction with stakes, and the flags provide the telephone contact numbers. Accordingly, it is recommended that N.J.A.C. 14:2-5.2(m)(5) be deleted. (GDCs)

RESPONSE: The Board agrees and has removed this redundancy upon adoption.

14:2-5.4 Centerline markouts

63. **COMMENT:** With respect to N.J.A.C. 14:2-5.4(b)(3) and N.J.A.C. 14:2-5.5(b)(2), the requirement to make three separate paint marks for markouts should be modified by the phrase “if practicable.” Facility operators have not been able to find a paint that has sufficient durability for 45 business days and that will not be too persistent, especially when applied to materials that have lasting absorbent properties such as decorative pavers. In addition, there may be instances where making three marks is not feasible and two marks are sufficient. (GDCs)

RESPONSE: It is important that markouts be as standardized as possible to ensure that excavators can easily interpret them. Allowing for the variation suggested by the commenter would risk confusion for minimal benefit. Further, if site conditions make it infeasible to place three marks, the underground facility operator may utilize an offset markout.

14:2-5.6 Offset markouts

64. **COMMENT:** For N.J.A.C. 14:2-5.6, we believe that the effect of this section is to place too many restrictions on the use of offsets, thereby endangering safety. For example, subsection (a) provides that an offset shall be utilized “only if exceptional conditions make it impossible to clearly mark the underground facility with a centerline markout” Moreover, subsection (h) provides that the distance between an underground facility and an offset markout “shall be as small as possible” We suggest that these restrictions be removed so as to encourage the use of offsets. It is recommended that the original code language be maintained to permit the use of offset marks. (GDCs)

RESPONSE: In the experience of Board staff, offset markouts are the least accurate and most difficult and confusing for excavators to interpret. Therefore, the rules are intended to discourage use of offset markouts unless they are necessary, and the suggested change has not been made. However, the description of an offset markout symbol at N.J.A.C. 14:2-5.6(c) has been clarified on adoption to make it easier for underground facility operators to comply with the requirements for offset markouts.

14:2-6.3 Notice failure, prima facie evidence of negligence

65. **COMMENT:** N.J.A.C. 14:2-6.3. If this section is adopted there should be a corresponding provision that an unmarked facility is prima facie evidence of an operator's negligence. (JFC)

RESPONSE: This provision applies a remedy for violation of the requirement that an excavator notify the One-Call center of a planned excavation. This is a simple

requirement that does not require special knowledge or technical expertise to fulfill. It would be difficult for an excavator to unknowingly or unintentionally fail to call the One-Call center. However, the requirement to accurately locate and mark out all underground facilities on a site is much more complex. Even a diligent underground facility operator could unknowingly or unintentionally fail to mark a facility. Therefore, the same remedy is not appropriate for both infractions. This is underscored by the fact that the Legislature chose to impose this remedy only for violation of the requirement to notify the One-Call center, and did not impose it for any other violation.

Summary of Agency-Initiated Changes:

1. Modifications to N.J.A.C. 14:2-3.1(a) and 3.2(a) provide an additional telephone number for the One-Call center and clarify that the electronic notice to the One-Call center must be done in accordance with a specific procedure provided by the center.
2. The heading of N.J.A.C. 14:2-3.6 is modified to clarify that this section applies to excavators and is separate from other similar provisions at N.J.A.C. 14:2-4.4, which apply to underground facility operators.
3. N.J.A.C. 14:2-3.6(b) is changed from a mandate to call the underground facility operator or the One-Call center or both, to a sequential mandate to call the underground facility operator first and then the One-Call center.
4. In N.J.A.C. 14:2-4.1(b)1, a sentence is added to clarify and emphasize the distinction made in the first sentence of the provision, between ownership and operation of an underground facility.
5. Proposed N.J.A.C. 14:2-4.4(h) has not been adopted. This subsection erroneously and significantly narrowed the class of underground facility operators that are required to submit quarterly damage or "hits" reports. This is inconsistent with the One-Call statute's requirements at N.J.S.A. 48:2-80c. The adoption returns to the Board's traditional and continuing practice of requiring quarterly reports of all underground facility operators that have sustained any damage to their facilities.
6. An erroneous cross-reference to "N.J.A.C. 14:2-5.5" in the last sentence of N.J.A.C. 14:2-5.5(a) is corrected to "N.J.A.C. 14:2-5.6," which is what the existing section pertains to.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-22 through 24 require State agencies that adopt, readopt or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. These rules do not exceed any Federal standards. However, under the Federal Pipeline Safety Act, 49 U.S.C. §§60101 and 60105, certain Federal funding for the State is conditioned on the implementation of a State One-Call program. The Federal Pipeline Safety Act does not require that a state implement a One-Call program. However, if the State implements such a program and other pipeline safety programs, the Act provides

funding to the State for these programs. The Board currently receives some funds under this Federal provision. In order to be eligible for the full Federal funding available, the New Jersey One-Call penalties, as well as the penalties for its other pipeline safety programs, must meet certain levels. However, the Board's enforcement penalties are not at present sufficiently stringent to make New Jersey eligible for the full amount of Federal funding available. If the Board were eligible for the full amount, Federal funds would cover almost 80% of the Board's costs for running the One-Call program. Amendments to the New Jersey Underground Facility Protection Act are being considered, which would increase the Board's authority to enforce the One-Call program so as to make the Board eligible for the full amount of Federal funding available. Therefore, N.J.A.C. 14:2-6.1(c) would provide for the Board to immediately implement any such statutory amendments.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 2. UNDERGROUND FACILITIES: ONE-CALL DAMAGE PREVENTION SYSTEM

SUBCHAPTER 1. SCOPE

14:2-1.1 Scope and applicability

(a) -- (c) (No change on adoption.)

(d) This chapter *[does not apply to an underground facility owned by]* *applies to* a homeowner *as follows*:

1. Because a homeowner* that owns only residential underground facilities, including but not limited to an underground sprinkler *system* or an underground structure for lighting*[.]* *, is excluded from the definition of "underground facility operator," such a homeowner is not subject to the requirements for underground facility operators at N.J.A.C. 14:2-4; and
2. Any homeowner that performs excavation or demolition is acting as an excavator and therefore shall comply with all requirements of this chapter that apply to excavators, including the requirement at N.J.A.C. 14:2-3.1 for notice to the One-Call center prior to excavation or demolition.*

(e) (No change on adoption.)

14:2-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1.

"Act" means the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq.

"Business day" means any day other than Saturday, Sunday, or a State recognized holiday.

"Damage" means any impact or contact with an underground facility, its appurtenances or its protective coating or any weakening of the support for the facility or protective housing, including, but not limited to, a break, leak, dent, gouge, groove, or other damage to the facility, its lines, or their coating or cathodic protection.

"Emergency" means:

1. Any condition constituting a clear and present danger to life, health or property caused by the escape of any material or substance transported by means of an underground facility, or by the interruption of a vital communication or public service that requires immediate action to prevent or mitigate loss or potential loss of the communication or public service; or
2. Any condition on or affecting a transportation right-of-way or transportation facility that creates a risk to the public of potential injury or property damage.

"Excavate" or "excavation" or "demolition" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosive, and includes, but is not limited to, drilling, grading, boring, milling to a depth greater than six inches, trenching, tunneling, scraping, tree and root removal, cable or pipe plowing, fence post or pile driving, and wrecking, razing, rending, or removing any structure or mass material. This term includes utility pole removal, but does not include:

1. Routine maintenance of residential property or of a *residential* right-of-way*, performed with non-mechanized equipment*, including the use of a hand tool to remove earth for the repair of a sprinkler system or to locate a property boundary marker, which does not remove earth to a depth of more than six inches]*;
2. Routine *[landscaping activities performed with non-mechanized equipment]* *use of a hand tool on a residential property or a residential right-of-way, to remove earth for the repair of a sprinkler system or to locate a property boundary marker*, which does not remove earth to a depth of more than six inches;
3. Excavation or demolition *that remains entirely* within the flexible or rigid pavement box within a right-of-way*, such that it does not disturb any material except for the pavement*;
4. Tilling of soil for agricultural purposes to a depth of eighteen inches or less, on land that has received or is eligible to receive a farmland assessment under the New Jersey Farmland Assessment Act, N.J.S.A 54:4-23.1 et seq.;
5. Routine landscaping activities with mechanized equipment that are intended to cut only vegetation, including lawn edging and de-thatching;
6. Routine maintenance of residential property for pest management purposes performed with non-mechanized equipment.

"Excavator" means any person performing excavation or demolition*, including a homeowner or person performing excavation or demolition on a residential property on behalf of a homeowner*.

"Hand digging" means any excavation involving non-mechanized tools or equipment, including, but not limited to, digging with shovels, picks, probe bars and manual post-hole diggers.

"Mark" means any line, arrow, curve, whiskers, flag, stake, or other symbol, placed or made as part of a markout.

"Markout" means letters, symbols and marks, as defined in this section, placed on the ground or other surface in order to show the location and characteristics of an underground facility.

"Mechanized equipment" means equipment powered by a motor, engine, or hydraulic, pneumatic or electrical device, including, but not limited to, trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, and other equipment used for plowing-in cable or pipe, but does not include tools manipulated solely by human power.

"Nominal" means, in relation to the size of a pipe or other underground facility, a stake, or other object, the commonly used name of the size of the object, rather than the actual size of the object. For example, since dimensional lumber is named based on its size before drying and planing, the nominal or common-named sizes of dimensional lumber are usually expressed in terms of the nearest inch, regardless of the actual size of the lumber. Thus, a board that is 2 x 4 inches in nominal size is closer to 1 ½ inches by 3 ½ inches in actual size.

"One-Call Damage Prevention System" means the communication system established in New Jersey pursuant to N.J.S.A. 48:2-76.

"One-Call System operator" or "System operator" means the person, as defined at N.J.A.C. 14:3-1.1, that the Board has designated to operate the New Jersey One-Call Damage Prevention System. The System operator's duties are detailed in a tariff, approved by the Board.

"One-Call incident" means any of the following, if [caused by a condition caused by] *it involves an underground facility and results from* excavation or demolition:

- *1. Death of a person;
2. Serious disabling or incapacitating injuries to one or more persons, including employees or contractors of an excavator or underground facility operator;
- *[1.]* *3.* Evacuation of a building that normally is occupied by more than twenty-five people;
- *[2.]* *4.* Evacuation of a school, hospital, public transit station, or similar public building;
- *5. Damage to the property of others estimated at more than \$5,000;
6. Damage to the property of the underground facility operator, which materially affects electric, gas, water or wastewater service to the public;*

- *[3. Closing of a major road;
- 4.]* *7.* Major disruption of traffic, business, media operations, transportation, or any other vital communication or public service;
- *[5.]* *8.* Significant environmental impact; or
- *9. An event that attracts the presence of media personnel at the event, or that attracts telephone or other contact from media personnel at the time of the event; and*
- *[6. Incident]* *10. Any other occurrence* similar to those at 1 through *[5]* *9* above, which has a significant impact on community or public safety functions.

"Person" means any individual, firm, joint venture, partnership, corporation, association, State, county, municipality, public agency or authority, bi-state or interstate agency or authority, public utility, cooperation association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

"Probe bar" means a rigid bar that is pushed through the earth in order to determine the exact location of underground facilities.

"Rented equipment" means mechanized equipment which is rented complete with its operator for use in an excavation or demolition.

"Rented equipment operator" means a person that performs excavation or demolition using rented equipment.

*["Reportable accident" shall have the same meaning as is assigned to this term at N.J.A.C. 14:3-6.4. As of {effective date of this rule}, "reportable accident" was defined as an accident, other than a motor vehicle accident, that results in one or more of the following circumstances:

1. Death of a person;
2. Serious disabling or incapacitating injuries to one or more persons, including employees or contractors of an excavator or underground facility operator;
3. Damage to the property of the utility, which materially affects its service to the public;
4. Damage to the property of others amounting to more than \$5,000;
5. Any accidental ignition of natural gas; and/or
6. Any other significant incident, including but not limited to:
 - i. The closure of a major road;
 - ii. The evacuation of a building that is normally open to the public;
 - iii. A school, hospital, medical facility, or similar facility is involved;
 - iv. An accident that is sufficiently significant to attract media attention; and
 - v. Any other incident of a similar nature to i through iv above.]*

"Responsible contractor" means a person that takes responsibility for ensuring that excavation or demolition that is performed by a rented equipment operator complies with this chapter.

"Routine" means an activity which is conducted on a cyclical basis, such as annually or seasonally, which is unlikely to result in damage to an underground facility.

"Routine maintenance of residential property or of a right-of-way" means an activity which meets all of the following criteria:

1. Is repeated on a cyclical basis, such as annually or seasonally;
2. Is conducted on a residential property or a right-of-way;
3. [Is conducted for the purpose of repairing an existing sprinkler system or locating a property boundary marker;]
- *[4.]* 3. Is conducted with a hand tool and without the use of mechanized equipment, as defined in this section; and
- *[5.]* 4. Is unlikely to result in damage to any underground facility.

"Site" means the specific place where the excavation or demolition is performed or is to be performed and shall be identified by street address referenced to the nearest intersecting street and sub-division name, if applicable, as well as by lot and block number, if available, and by kilometer or mile marker for railways. The boundaries of a site are determined by the excavator that will be doing the excavation or demolition.

"State department or agency" means any department, public authority, public agency, public commission, or other political subdivision of the State, including any county, municipality or political subdivision thereof.

"Underground facility" means any public or private personal property:

1. Which is buried, placed below ground, or submerged on a right-of-way, easement, public street, other public place or private property; and
2. Which is being used, or will be used:
 - i. For the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, or traffic control; or
 - ii. For the transportation of a hazardous liquid regulated pursuant to 49 U.S.C. §§60101 et seq.

[This term includes property that runs between the meter located on the customer's premises and an underground facility operator's facilities, regardless of who owns the property; for example, a customer-owned underground electric line in an area served by overhead electric lines.] This term does not include storm drains or gravity sewers. For the purpose of this definition, "personal property" means a single conduit, or multiple conduits of the same facility type within a rigid envelope such as a concrete envelope. This envelope shall be considered one facility for the purposes of these rules, except as otherwise specifically provided.

"Underground facility operator" or "operator" means a person that owns or operates, or controls the operation of, an underground facility*[. This]* *, except that this* term does not include a homeowner who owns only residential underground facilities, such as an underground lawn sprinkler system or an underground structure for a residential low-voltage lighting system.

Note: This is a courtesy copy of the adoption document. The official version will be published in the New Jersey Register on October 15, 2007. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

“Whiskers” means a small sheaf of plastic fibers, bent double and fastened together at the bent end, used to create a marker that may be used in place of paint under N.J.A.C. 14:2-5.2(c).

SUBCHAPTER 2. ONE-CALL SYSTEM OPERATOR

14:2-2.2 Designation and term of System operator

(a) - (c) (No change on adoption.)

(d) The Board shall accept applications and shall designate a person as the System operator for a new five year term. In choosing a System operator, the Board shall select the applicant that will best operate the system to achieve the purposes of the Underground Facility Protection Act *, in accordance with N.J.S.A. 52:34-12 and N.J.A.C. 17:12*.

(e) (No change on adoption.)

SUBCHAPTER 3. EXCAVATORS AND RESPONSIBLE CONTRACTORS

14:2-3.1 Notice of intent to excavate - timing

(a) A person shall not perform excavation or demolition, as defined at N.J.A.C. 14:2-1.2, unless *[an excavator or] *the person performing the excavation or demolition, or a responsible contractor*.* has provided notice of the excavation or demolition to the One-Call center by dialing 811 *or 1-800-272-1000*, or by *[e-mailing or providing] *electronic* notice *through the One-Call website,]* as directed by the One-Call System operator in accordance with its Board-approved tariff. *Requests provided electronically or through any procedure other than that directed for use by the One-Call System operator shall not constitute notice in compliance with this section.*

(b) - (f) (No change on adoption.)

14:2-3.2 Notice of intent to excavate – contents, perimeter marking

(a) An excavator or responsible contractor shall provide *[the]* notice *of a planned excavation or demolition* to the One-Call center *[required under this chapter]* by telephone (dial 811 *or 1-800-272-1000*), *[e-mail, or through the One-Call website,]* *or by electronic notice* as directed by the One-Call System Operator in accordance with its Board-approved tariff. *Requests provided electronically or through any procedure other than that directed for use by the One-Call System operator shall not constitute notice in compliance with this section.*

(b) - (e) (No change on adoption.)

14:2-3.3 Excavators - onsite requirements

(a) Before performing any excavation or demolition on a site, an excavator or responsible contractor may log onto the One-Call positive response website to determine whether any underground facility operators for a site have indicated that they do not own, operate or control any underground facilities on the site that require marking out.]

(b)] *(a)* An excavator or responsible contractor shall:

1. (No change on adoption.)
2. Plan the excavation or demolition *with reasonable care so as* to avoid damage to* and *[to]* minimize interference with, underground facilities;
3. Use reasonable care during excavation or demolition to avoid damage to or interference with underground facilities, including protecting each underground facility from freezing, traffic, and/or other loads or hazard *in accordance with (b) below*; and
4. After commencement of excavation or demolition, protect and preserve the marking, staking*[,]* or other designation of an underground facility*[:]* until the marking, staking or other designation is no longer necessary for safe excavation or demolition.

*(c)An excavator shall plan and execute each excavation or demolition with reasonable care in order to avoid damage to, and to minimize interference with, all underground facilities on the site.

(d) An excavator shall ensure that all mechanized equipment is used with proper care and under adequate supervision to avoid damage to any underground facilities on the site.]*

(e)] *(b)* At all times throughout the course of an excavation or demolition, an excavator shall *[ensure that each underground facility is adequately protected from freezing and traffic, and shall also]* provide adequate physical support of all underground facilities on the site, as follows:

1. - 4. (No change on adoption.)

(f)] *(c)* If a representative of an underground facility operator determines that an excavator is not adequately protecting or supporting the facility, *resulting in an unsafe condition or situation relating to the excavation or demolition,* the representative may require the excavator to suspend the excavation or demolition until the problem is corrected. *The representative may impose this requirement verbally only if the representative believes that an emergency exists, and shall provide a written confirmation of the verbal directive to suspend work as soon as feasible thereafter. In all other situations, the representative shall provide the directive to suspend the excavation or demolition in writing.*

14:2-3.6 Excavators - *[accident]* incident* and damage reporting

(a) If an excavator causes or discovers any damage, as defined at N.J.A.C. 14:2-1.2, to a line or pipe carrying natural gas, liquid petroleum or any other hazardous liquid, the excavator shall immediately call 911, and shall immediately *thereafter* report the damage to the *[One-Call center at 811 or 1-800-272-1000 and/or the]* appropriate representative of the underground facility operator. *If the excavator cannot reach the underground facility operator, the excavator shall report the damage to the One-Call center at 811 or 1-800-272-1000.*

(b) If an excavator causes or discovers any damage to an underground facility that carries anything other than natural gas, liquid petroleum or another hazardous liquid, the excavator shall immediately report the damage to the *appropriate representative of the underground facility operator. Immediately thereafter, the excavator shall report the damage to the* One-Call center at 1-800-272-1000 or 811 *[and/or the appropriate representative of the underground facility operator]*.

(c) (No change on adoption.)

(d) If, during excavation or demolition, an excavator causes or discovers *any of the following, the excavator may complete and submit to the One-Call center a dangerous condition reporting form:

- 1.* [an]* An* underground facility that is *[shallower than required by law,]* *, in the excavator's judgment, buried at a depth that is insufficient for safety;* or
- 2.* [any]* Any* other condition or configuration relating to an underground facility, which*, in the excavator's judgment,* has the potential to pose a danger to health and safety, and which is not covered under (a) or (b) above *[, the excavator shall complete and submit to the One-Call center a dangerous condition reporting form.]*

(e) *[This]* The* form required under (d) above* shall be provided by the System operator in accordance with N.J.A.C. 14:2-2.1(c).

SUBCHAPTER 4. UNDERGROUND FACILITY OPERATORS

14:2-4.1 Applicability

(a) This subchapter applies to underground facility operators, as defined at N.J.A.C. 14:2-1.2, except as specified in this section.

(b) An operator of an underground non-metallic water pipe or non-metallic water distribution facility that was installed prior to November 18, 1994 is exempt from the requirement at N.J.A.C. 14:2-4.2(a)2 to mark out the facility, but shall, within three business days of the notice to the One-Call center, cooperate with excavators in reasonable efforts to determine the location of the facility.

(c) An underground facility operator that is a State department or agency is exempt from the requirement at N.J.A.C. 14:2-4.2(a)2 to mark out *[a site] *its facilities* in accordance with N.J.A.C. 14:2-4.2(a)2 if all of the following criteria are met:

1. - 6. (No change on adoption.)

(d) (No change on adoption.)

(e) An underground facility operator that is exempt from markout requirements in accordance with *[N.J.A.C. 14:2-4.1](b) or (c) *above* shall comply with all other requirements in this chapter.

14:2-4.2 Underground facility operators – basic requirements

(a) (No change on adoption.)

(b) Within three business days after receiving information from the One-Call center regarding a planned excavation or demolition, an underground facility operator shall do either of the following:

1. If the underground facility operator owns, operates or controls any underground facilities on the site, the *underground facility* operator shall mark out the site as required under N.J.A.C. 14:2-5, except if a facility is exempt from markout requirements under N.J.A.C. 14:2-4.1(b) or (c)*. If an underground facility operator does not own or operate a facility, but controls it, the operator is responsible for compliance with this paragraph*; or
2. *[Log onto the One-Call center's online positive response system and indicate, in the manner required by the positive response system, that] * If* the underground facility operator does not own, operate or control any underground facilities on the site*, the underground facility operator shall make a reasonable effort to notify the excavator of that fact.*

[(c) If an underground facility operator subject to (b)2 above fails to indicate on the One-Call positive response system that the underground facility operator does not own, operate or control any underground facilities on the site in accordance with (b)2 above, the One-Call System operator shall notify the underground facility operator of its noncompliance by e-mail, and shall report all such noncompliance to the Board on a monthly basis.]

* (c) For the purposes of (b) above, an underground facility operator shall be deemed to control all portions of an underground facility carrying metered service, which are not located on the customer's side of the meter, regardless of who owns the property. For example, if a residential electric customer owns an underground electric line, which provides electricity from the street to the customer's electric meter in an area served by overhead electric lines, the electric utility shall be deemed to control that underground electric line.*

(d) An underground facility operator shall provide to the excavator specifications for supporting any underground facility on the site which requires physical support during excavation or demolition, including the type, strength and arrangement of the support. In accordance with N.J.A.C. 14:2-3.3*(e)* *(b)4*, if the parties mutually agree, the underground facility operator shall provide such support.

(e) If an underground facility operator receives a request from the One-Call center for an emergency markout, the underground facility operator shall *,*

1. *[immediately]* **Immediately** dispatch appropriate personnel to the site in accordance with the emergency provisions at N.J.A.C. 14:2-4.4*]. This subsection shall apply to all underground facility operators that are notified by the One-Call center, regardless of whether the underground facility operator's facilities are involved in the emergency or not.]* *, or
2. If the underground facility operator does not own, operate or control any underground facilities on the site, the operator shall immediately notify the excavator of that fact. If the underground facility operator cannot confirm that the excavator is aware that the underground facility operator does not own, operate or control any underground facilities on the site, the operator shall immediately dispatch appropriate personnel to the site.

(f) The requirements at (e) above shall apply to all underground facility operators that receive a request from the One-Call center for an emergency markout, regardless of whether the underground facility operator's facilities are involved in the emergency or not.*

14:2-4.4 Underground facility operators – accidents and emergencies

(a) An underground facility operator shall ensure that *[sufficient supervisory]* employees *[are available]* **who are qualified** to accept and respond to reports of accidents, damage and emergencies that involve its underground facilities, **are available** at all times of day and night throughout the year. Each underground facility operator shall provide the Board with the names and titles of these *[supervisory employees]* **qualified response personnel**, as part of *[the quarterly]* **every** report required under (h) below.

(b) (No change on adoption.)

(c) Each underground facility operator shall *[comply]* **report any One-Call incident**, as defined at N.J.A.C. 14:2-1.2, to the Board in accordance with* with the reporting *[requirements]* **procedures** for reportable accidents*, as defined at N.J.A.C. 14:2-1.2. These reporting requirements are* found in the Board's rules for all utilities at N.J.A.C. 14:3-6.4. Should there be any inconsistency between the *[requirements]* **reporting procedures** at N.J.A.C. 14:3-6.4 and those of this subchapter, the more stringent requirement shall govern.

[(d) The reporting requirements for reportable accidents shall also apply to One-Call incidents, as defined at N.J.A.C. 14:2-1.2.]

[(e)] *(d)* Whenever an underground facility operator is notified of a *[reportable accident and/or a]* One-Call incident, the operator shall immediately, and in no event later than one hour after notice of the *[accident, notify]* *incident, contact* the Board's Division of Reliability and Security at (973) 648-2066, or at (800) 817-6715 outside of business hours *, and shall verbally provide the location and a brief description of the incident*.

(e) If the underground facilities of a public utility are affected by an occurrence that meets both the definition of a reportable accident under N.J.A.C. 14:3-6 and a One-Call incident under this chapter, the utility shall comply with the procedures for a reportable accident under N.J.A.C. 14:3-6, and shall also notify the Board in accordance with the requirements for a One-Call incident under (d) above.

(f) As soon as possible after a *[reportable accident or a]* One-Call incident, and in no case later than fifteen calendar days afterwards, the underground facility operator shall follow up the initial notice required under this section with a detailed written report. The written report shall include all significant facts of which the underground facility operator is aware regarding the location and cause of the *[accident or]* incident, and the extent of any damage and/or injuries.

(g) Each operator of an underground facility that handles natural gas or hazardous liquids shall submit a "hits report" listing any damage, emergency *[, reportable accident]* or One-Call incident involving the operator's natural gas or hazardous liquids facilities. The report shall be made on forms provided by the Board on its website at www.bpu.state.nj.us, and shall be submitted to the Board by the close of business on *[Friday of]* *Tuesday of the week following* any *two-*week *period* in which any such damage, emergency*[, reportable accident]* or One-Call incident has occurred.

*[(h) The following underground facility operators shall submit a quarterly report to the Board, which includes all damage to its underground facilities:

1. All public utilities subject to the jurisdiction of the Board;
2. All cable television operators subject to the jurisdiction of the Board; and
3. All owners or operators of interstate pipelines that run through any part of New Jersey.]*

*[(h) All underground facility operators shall submit the following report(s) to the Board, as applicable:

1. An underground facility operator with facilities that have sustained any damage, as defined at N.J.A.C. 14:2-1.2, during a quarter shall submit a "hits report," including all damage occurring to its facilities during that quarter. No quarterly report is required from an underground facility operator that has had no damage to its facilities during that quarter;

2. Any underground facility operator that has had no damage to its facilities during a year shall submit an annual "no hits" report. The "no hits" report shall be submitted on January 30th of each year; and
3. Both the quarterly and annual reports required under this subsection shall contain the contact information for the qualified response personnel described under N.J.A.C. 14:2-4.4(a).

(i) - (j) (No change on adoption.)

SUBCHAPTER 5. MARKOUTS

14:2-5.2 Specifications for marks used in markouts

(a) An underground facility operator shall perform all markouts using paint. In addition, if the markout must be made on a non-firm surface including but not limited to grass, dirt, gravel or sand*[,]* or if weather or site conditions may make paint difficult to use or see,* the underground facility operator shall utilize paint, and in addition shall utilize stakes and/or flags. If used, the location of any stakes or flags shall conform to the diagrams in appendix A.

(b) - (l) (No change on adoption.)

(m) The underground facility operator shall ensure that all stakes used in markouts shall be:

1. Two inches by two inches by twenty-four inches in nominal dimension;
2. Colored in accordance with the color coding requirements of N.J.A.C. 14:2-5.2. The color shall cover the top six inches of the stake;
3. Marked with a letter designation code indicating the type of underground facility in accordance with Table A in N.J.A.C. 14:2-5.2. The letters shall be at least one inch high;
4. Marked with the underground facility operator's initials or logo in black letters or symbols at least one inch high;
- *5. Marked with the underground facility operator's telephone number or the telephone number of the New Jersey One-Call Damage Prevention Center (811 and/or 1-800-272-1000), in letters at least one inch high;]* and
- *5.* Not less than eighteen inches of the stake shall be exposed above the surface of the ground.

(n) - (o) (No change on adoption.)

14:2-5.5 Outside dimension markouts

(a) An underground facility operator shall utilize an outside dimension markout to indicate an underground facility that is more than twelve inches in nominal outside dimension, unless exceptional site conditions would either make it impossible to clearly mark the outside walls of the underground facility in accordance with this section; or

would make it impossible for the excavator to see the markings in an outside dimension markout. In a case with such exceptional site conditions, an underground facility operator may utilize an outside dimension offset markout, described at N.J.A.C. 14:2-~~5.5~~ 5.6.

(b) - (c)

14:2-5.6 Offset markouts

(a) - (b) (No change on adoption.)

(c) An offset markout symbol shall consist of the following:

1. Two ~~perpendicular~~ T-shaped paint marks ~~that~~:
 - i. Are one inch to two inches in width and eight inches to ten inches in length ~~with~~;
 - ii. Have the top of each T running parallel to the centerline of the underground facility; and
 - iii. Have an arrowhead on the leg of each T, pointing in the direction of the underground facility;
2. The following shall appear above the arrow:
 - i. The appropriate letter designation code from Table A in N.J.A.C. 14:2-5.2;
 - ii. Numbers indicating the nominal outside dimension of the underground facility in inches; and
 - iii. Numbers indicating the distance from the centerline or outside wall of the underground facility to the ~~markout line~~ top line of the T, measured in inches; and
3. The letters "OFF" shall appear in capital letters below the arrow.

(d) - (h)