

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Underground Utility Facilities
5 Damage Prevention Act is amended by changing Sections 2, 2.2,
6 2.3, 4, 6, 10, and 11 and by adding Sections 2.9, 2.10, and
7 2.11 as follows:

8 (220 ILCS 50/2) (from Ch. 111 2/3, par. 1602)

9 Sec. 2. Definitions. As used in this Act, unless the
10 context clearly otherwise requires, the terms specified in
11 Sections 2.1 through 2.11 ~~2.8~~ have the meanings ascribed to
12 them in those Sections.

13 (Source: P.A. 92-179, eff. 7-1-02.)

14 (220 ILCS 50/2.2) (from Ch. 111 2/3, par. 1602.2)

15 Sec. 2.2. Underground utility facilities. "Underground
16 utility facilities" or "facilities" means and includes wires,
17 ducts, fiber optic cable, conduits, pipes, sewers, and cables
18 and their connected appurtenances installed beneath the
19 surface of the ground by a public utility (as is defined in the
20 Illinois Public Utilities Act, as amended), or by a municipally
21 owned or mutually owned utility providing a similar utility
22 service, except an electric cooperative as defined in the
23 Illinois Public Utilities Act, as amended, or by a pipeline
24 entity transporting gases, crude oil, petroleum products, or
25 other hydrocarbon materials within the State, or by a
26 telecommunications carrier as defined in the Universal
27 Telephone Service Protection Law of 1985, or by a company
28 described in Section 1 of "An Act relating to the powers,
29 duties and property of telephone companies", approved May 16,
30 1903, as amended, or by a community antenna television system,
31 hereinafter referred to as "CATS", as defined in the Illinois

1 Municipal Code, as amended.

2 (Source: P.A. 92-179, eff. 7-1-02.)

3 (220 ILCS 50/2.3) (from Ch. 111 2/3, par. 1602.3)

4 Sec. 2.3. Excavation. "Excavation" means any operation in
5 which earth, rock, or other material in or on the ground is
6 moved, removed, or otherwise displaced by means of any tools,
7 power equipment or explosives, and includes, without
8 limitation, grading, trenching, digging, ditching, drilling,
9 augering, boring, tunneling, scraping, cable or pipe plowing,
10 and driving but does not include farm tillage operations or
11 railroad right-of-way maintenance or operations or coal mining
12 operations regulated under the Federal Surface Mining Control
13 and Reclamation Act of 1977 or any State law or rules or
14 regulations adopted under the federal statute, or land
15 surveying operations as defined in the Illinois Professional
16 Land Surveyor Act of 1989 when not using power equipment, or
17 roadway surface milling.

18 (Source: P.A. 92-179, eff. 7-1-02.)

19 (220 ILCS 50/2.9 new)

20 Sec. 2.9. "Forty-eight hours" means 2 business days
21 beginning at 8 a.m. and ending at 4 p.m. (exclusive of
22 Saturdays, Sundays, and holidays recognized by the State-Wide
23 One-Call Notice System or the municipal one-call notice
24 system). All requests for locates received after 4 p.m. will be
25 processed as if received at 8 a.m. the next business day.

26 (220 ILCS 50/2.10 new)

27 Sec. 2.10. "Open cut utility locate" means a method of
28 locating underground utility facilities that requires
29 excavation by the owner, operator, or agent of the underground
30 facility.

31 (220 ILCS 50/2.11 new)

32 Sec. 2.11. "Roadway surface milling" means the removal of a

1 uniform pavement section by rotomilling, grinding, or other
2 means not including the base or subbase.

3 (220 ILCS 50/4) (from Ch. 111 2/3, par. 1604)

4 Sec. 4. Required activities. Every person who engages in
5 nonemergency excavation or demolition shall:

6 (a) take reasonable action to inform himself of the
7 location of any underground utility facilities or CATS
8 facilities in and near the area for which such operation is to
9 be conducted;

10 (b) plan the excavation or demolition to avoid or minimize
11 interference with underground utility facilities or CATS
12 facilities within the tolerance zone by utilizing such
13 precautions that include, but are not limited to, hand
14 excavation, vacuum excavation methods, and visually inspecting
15 the excavation while in progress until clear of the existing
16 marked facility;

17 (c) if practical, use white paint, flags, stakes, or both,
18 to outline the dig site;

19 (d) provide notice not less than 48 hours ~~(exclusive of~~
20 ~~Saturdays, Sundays and holidays)~~ but no more than 14 calendar
21 days in advance of the start of the excavation or demolition to
22 the owners or operators of the underground utility facilities
23 or CATS facilities in and near the excavation or demolition
24 area through the State-Wide One-Call Notice System or, in the
25 case of nonemergency excavation or demolition within the
26 boundaries of a municipality of at least one million persons
27 which operates its own one-call notice system, through the
28 one-call notice system which operates in that municipality;

29 (e) provide, during and following excavation or
30 demolition, such support for existing underground utility
31 facilities or CATS facilities in and near the excavation or
32 demolition area as may be reasonably necessary for the
33 protection of such facilities unless otherwise agreed to by the
34 owner or operator of the underground facility or CATS facility;

35 (f) backfill all excavations in such manner and with such

1 materials as may be reasonably necessary for the protection of
2 existing underground utility facilities or CATS facilities in
3 and near the excavation or demolition area; and

4 (g) After February 29, 2004, when the excavation or
5 demolition project will extend past 28 calendar days from the
6 date of the original notice provided under clause (d), the
7 excavator shall provide a subsequent notice to the owners or
8 operators of the underground utility facilities or CATS
9 facilities in and near the excavation or demolition area
10 through the State-Wide One-Call Notice System or, in the case
11 of excavation or demolition within the boundaries of a
12 municipality having a population of at least 1,000,000
13 inhabitants that operates its own one-call notice system,
14 through the one-call notice system that operates in that
15 municipality informing utility owners and operators that
16 additional time to complete the excavation or demolition
17 project will be required. The notice will provide the excavator
18 with an additional 28 calendar days from the date of the
19 subsequent notification to continue or complete the excavation
20 or demolition project.

21 At a minimum, the notice required under clause (d) shall
22 provide:

23 (1) the person's name, address, and (i) phone number at
24 which a person can be reached and (ii) fax number, if
25 available;

26 (2) the start date of the planned excavation or
27 demolition;

28 (3) the address at which the excavation or demolition
29 will take place;

30 (4) the type and extent of the work involved; and

31 (5) section/quarter sections when the above
32 information does not allow the State-Wide One-Call Notice
33 System to determine the appropriate geographic
34 section/quarter sections. This item (5) does not apply to
35 residential property owners.

36 Nothing in this Section prohibits the use of any method of

1 excavation if conducted in a manner that would avoid
2 interference with underground utility facilities or CATS
3 facilities.

4 (Source: P.A. 92-179, eff. 7-1-02; 93-430, eff. 8-5-03.)

5 (220 ILCS 50/6) (from Ch. 111 2/3, par. 1606)

6 Sec. 6. Emergency excavation or demolition.

7 (a) Every person who engages in emergency excavation or
8 demolition outside of the boundaries of a municipality of at
9 least one million persons which operates its own one-call
10 notice system shall take all reasonable precautions to avoid or
11 minimize interference between the emergency work and existing
12 underground utility facilities or CATS facilities in and near
13 the excavation or demolition area, through the State-Wide
14 One-Call Notice System, and shall notify, as far in advance as
15 possible, the owners or operators of such underground utility
16 facilities or CATS facilities in and near the emergency
17 excavation or demolition area, through the State-Wide One-Call
18 Notice System. At a minimum, the notice required under this
19 subsection (a) shall provide:

20 (1) the person's name, address, and (i) phone number at
21 which a person can be reached and (ii) fax number, if
22 available;

23 (2) the start date of the planned emergency excavation
24 or demolition;

25 (3) the address at which the excavation or demolition
26 will take place; and

27 (4) the type and extent of the work involved.

28 There is a wait time of 2 hours or the date and time
29 requested on the notice, whichever is longer, ~~A 2-hour wait~~
30 ~~time exists~~ after an emergency locate notification request is
31 made through the State-Wide One-Call Notice System. If the
32 conditions at the site dictate an earlier start than the
33 required ~~2-hour~~ wait time, it is the responsibility of the
34 excavator to demonstrate that site conditions warranted this
35 earlier start time.

1 Upon notice by the person engaged in emergency excavation
2 or demolition, the owner or operator of an underground utility
3 facility or CATS facility in or near the excavation or
4 demolition area shall communicate with the person engaged in
5 emergency excavation or demolition within 2 hours or by the
6 date and time requested on the notice, whichever is longer.

7 The notice by the owner or operator to the person engaged
8 in emergency excavation or demolition may be provided by phone
9 or phone message or by marking the excavation or demolition
10 area. The owner or operator has discharged the owner's or
11 operator's obligation to provide notice under this Section if
12 the owner or operator attempts to provide notice by telephone
13 but is unable to do so because the person engaged in the
14 emergency excavation or demolition does not answer his or her
15 telephone or does not have an answering machine or answering
16 service to receive the telephone call. If the owner or operator
17 attempts to provide notice by telephone or by facsimile but
18 receives a busy signal, that attempt shall not discharge the
19 owner or operator from the obligation to provide notice under
20 this Section.

21 (b) Every person who engages in emergency excavation or
22 demolition within the boundaries of a municipality of at least
23 one million persons which operates its own one-call notice
24 system shall take all reasonable precautions to avoid or
25 minimize interference between the emergency work and existing
26 underground utility facilities or CATS facilities in and near
27 the excavation or demolition area, through the municipality's
28 one-call notice system, and shall notify, as far in advance as
29 possible, the owners and operators of underground utility
30 facilities or CATS facilities in and near the emergency
31 excavation or demolition area, through the municipality's
32 one-call notice system.

33 (c) The reinstallation of traffic control devices shall be
34 deemed an emergency for purposes of this Section.

35 (d) An open cut utility locate shall be deemed an emergency
36 for purposes of this Section.

1 (Source: P.A. 92-179, eff. 7-1-02.)

2 (220 ILCS 50/10) (from Ch. 111 2/3, par. 1610)

3 Sec. 10. Record of notice; marking of facilities. Upon
4 notice by the person engaged in excavation or demolition, the
5 person owning or operating underground utility facilities or
6 CATS facilities in or near the excavation or demolition area
7 shall cause a written record to be made of the notice and shall
8 mark, within 48 hours ~~(excluding Saturdays, Sundays and~~
9 ~~holidays)~~ of receipt of notice, the approximate locations of
10 such facilities so as to enable the person excavating or
11 demolishing to establish the location of the underground
12 utility facilities or CATS facilities. Owners and operators of
13 underground sewer facilities that are located outside the
14 boundaries of a municipality having a population of at least
15 1,000,000 inhabitants shall be required to respond and mark the
16 approximate location of those sewer facilities when the
17 excavator indicates, in the notice required in Section 4, that
18 the excavation or demolition project will exceed a depth of 7
19 feet. "Depth", in this case, is defined as the distance
20 measured vertically from the surface of the ground to the top
21 of the sewer facility. Owners and operators of underground
22 sewer facilities that are located outside the boundaries of a
23 municipality having a population of at least 1,000,000
24 inhabitants shall be required at all times to locate the
25 approximate location of those sewer facilities when: (1)
26 directional boring is the indicated type of excavation work
27 being performed within the notice; (2) the underground sewer
28 facilities owned are non-gravity, pressurized force mains; or
29 (3) the excavation indicated will occur in the immediate
30 proximity of known underground sewer facilities that are less
31 than 7 feet deep. Owners or operators of underground sewer
32 facilities that are located outside the boundaries of a
33 municipality having a population of at least 1,000,000
34 inhabitants shall not hold an excavator liable for damages that
35 occur to sewer facilities that were not required to be marked

1 under this Section, provided that prompt notice of the damage
2 is made to the State-Wide One-Call Notice System and the
3 utility owner as required in Section 7.

4 All persons subject to the requirements of this Act shall
5 plan and conduct their work consistent with reasonable business
6 practices. Conditions may exist making it unreasonable to
7 request that locations be marked within 48 hours. It is
8 unreasonable to request owners and operators of underground
9 utility facilities and CATS facilities to locate all of their
10 facilities in an affected area upon short notice in advance of
11 a large or extensive nonemergency project, or to request
12 extensive locates in excess of a reasonable excavation or
13 demolition work schedule, or to request locates under
14 conditions where a repeat request is likely to be made because
15 of the passage of time or adverse job conditions. Owners and
16 operators of underground utility facilities and CATS
17 facilities must reasonably anticipate seasonal fluctuations in
18 the number of locate requests and staff accordingly.

19 If a person owning or operating underground utility
20 facilities or CATS facilities receives a notice under this
21 Section but does not own or operate any underground utility
22 facilities or CATS facilities within the proposed excavation or
23 demolition area described in the notice, that person, within 48
24 hours ~~(excluding Saturdays, Sundays, and holidays)~~ after
25 receipt of the notice, shall so notify the person engaged in
26 excavation or demolition who initiated the notice, unless the
27 person who initiated the notice expressly waives the right to
28 be notified that no facilities are located within the
29 excavation or demolition area. The notification by the owner or
30 operator of underground utility facilities or CATS facilities
31 to the person engaged in excavation or demolition may be
32 provided in any reasonable manner including, but not limited
33 to, notification in any one of the following ways: by
34 face-to-face communication; by phone or phone message; by
35 facsimile; by posting in the excavation or demolition area; or
36 by marking the excavation or demolition area. The owner or

1 operator of those facilities has discharged the owner's or
 2 operator's obligation to provide notice under this Section if
 3 the owner or operator attempts to provide notice by telephone
 4 or by facsimile, if the person has supplied a facsimile number,
 5 but is unable to do so because the person engaged in the
 6 excavation or demolition does not answer his or her telephone
 7 or does not have an answering machine or answering service to
 8 receive the telephone call or does not have a facsimile machine
 9 in operation to receive the facsimile transmission. If the
 10 owner or operator attempts to provide notice by telephone or by
 11 facsimile but receives a busy signal, that attempt shall not
 12 serve to discharge the owner or operator of the obligation to
 13 provide notice under this Section.

14 A person engaged in excavation or demolition may expressly
 15 waive the right to notification from the owner or operator of
 16 underground utility facilities or CATS facilities that the
 17 owner or operator has no facilities located in the proposed
 18 excavation or demolition area. Waiver of notice is only
 19 permissible in the case of regular or nonemergency locate
 20 requests. The waiver must be made at the time of the notice to
 21 the State-Wide One-Call Notice System. A waiver made under this
 22 Section is not admissible as evidence in any criminal or civil
 23 action that may arise out of, or is in any way related to, the
 24 excavation or demolition that is the subject of the waiver.

25 For the purposes of this Act, underground facility
 26 operators may utilize a combination of flags, stakes, and paint
 27 when possible on non-paved surfaces and when dig site and
 28 seasonal conditions warrant. If the approximate location of an
 29 underground utility facility or CATS facility is marked with
 30 stakes or other physical means, the following color coding
 31 shall be employed:

| | | |
|----|---|----------------------|
| 32 | <u>Underground Facility</u> Utility or | Identification Color |
| 33 | Community Antenna | |
| 34 | Television Systems and Type | |
| 35 | of Product | |

1 Facility Owner or Agent Use Only

2 Electric Power, Distribution and

3 Transmission Safety Red

4 Municipal Electric Systems Safety Red

5 Gas Distribution and Transmission High Visibility

6 Safety Yellow

7 Oil Distribution and Transmission High Visibility

8 Safety Yellow

9 Telephone and Telegraph Systems Safety Alert Orange

10 Community Antenna Television Systems .. Safety Alert Orange

11 Water Systems Safety

12 Precaution Blue

13 Sewer Systems Safety Green

14 Non-potable Water and Slurry Lines Safety Purple

15 Excavator Use Only

16 Temporary Survey Safety Pink

17 Proposed Excavation Safety White (Black

18 when snow is

19 on the ground)

20 (Source: P.A. 92-179, eff. 7-1-02; 93-430, eff. 8-5-03.)

21 (220 ILCS 50/11) (from Ch. 111 2/3, par. 1611)

22 Sec. 11. Penalties; liability; fund.

23 (a) Every person who, while engaging in excavation or
24 demolition, wilfully fails to comply with the Act by failing to
25 provide the notice to the owners or operators of the
26 underground facilities or CATS facility near the excavation or
27 demolition area through the State-Wide One-Call Notice System
28 as required by Section 4 or 6 of this Act shall be subject to a
29 penalty of up to \$5,000 for each separate offense and shall be
30 liable for the damage caused to the owners or operators of the
31 facility.

32 (b) Every person who, while engaging in excavation or
33 demolition, has provided the notice to the owners or operators
34 of the underground utility facilities or CATS facilities in and

1 near the excavation or demolition area through the State-Wide
2 One-Call Notice System as required by Section 4 or 6 of this
3 Act, but otherwise wilfully fails to comply with this Act,
4 shall be subject to a penalty of up to \$2,500 for each separate
5 offense and shall be liable for the damage caused to the owners
6 or operators of the facility.

7 (c) Every person who, while engaging in excavation or
8 demolition, has provided the notice to the owners or operators
9 of the underground utility facilities or CATS facilities in and
10 near the excavation or demolition area through the State-Wide
11 One-Call Notice System as required by Section 4 or 6 of this
12 Act, but otherwise, while acting reasonably, damages any
13 underground utility facilities or CATS facilities, shall not be
14 subject to a penalty, but shall be liable for the damage caused
15 to the owners or operators of the facility provided the
16 underground utility facility or CATS facility is properly
17 marked as provided in Section 10 of this Act.

18 (d) Every person who, while engaging in excavation or
19 demolition, provides notice to the owners or operators of the
20 underground utility facilities or CATS facilities through the
21 State-Wide One-Call Notice System as an emergency locate
22 request and the locate request is not an emergency locate
23 request as defined in Section 2.6 of this Act shall be subject
24 to a penalty of up to \$2,500 for each separate offense.

25 (e) Owners and operators of underground utility facilities
26 or CATS facilities (i) who wilfully fail to comply with this
27 Act by a failure to mark the location of an underground utility
28 or CATS facility or a failure to provide notice that facilities
29 are not within the proposed excavation or demolition area as
30 required in Section 10, or (ii) who willfully fail to respond
31 as required in Section 6 to an emergency request, after being
32 notified of planned excavation or demolition through the
33 State-Wide One-Call Notice System, shall be subject to a
34 penalty of up to \$5,000 for each separate offense resulting
35 from the failure to mark an underground utility facility or
36 CATS facility.

1 (f) As provided in Section 3 of this Act, all owners or
2 operators of underground utility facilities or CATS facilities
3 who fail to join the State-Wide One-Call Notice System by
4 January 1, 2003 shall be subject to a penalty of \$100 per day
5 for each separate offense. Every day an owner or operator fails
6 to join the State-Wide One-Call Notice System is a separate
7 offense. This subsection (f) does not apply to utilities
8 operating facilities or CATS facilities exclusively within the
9 boundaries of a municipality with a population of at least
10 1,000,000 persons.

11 (g) No owner or operator of underground utility facilities
12 or CATS facilities shall be subject to a penalty where a delay
13 in marking or a failure to mark or properly mark the location
14 of an underground utility or CATS facility is caused by
15 conditions beyond the reasonable control of such owner or
16 operator.

17 (h) Any person who is neither an agent, employee, or
18 authorized locating contractor of the owner or operator of the
19 underground utility facility or CATS facility nor an excavator
20 involved in the excavation activity who removes, alters, or
21 otherwise damages markings, flags, or stakes used to mark the
22 location of an underground utility or CATS facility other than
23 during the course of the excavation for which the markings were
24 made or before completion of the project shall be subject to a
25 penalty up to \$1,000 for each separate offense.

26 (i) The excavator shall exercise due care at all times to
27 protect underground utility facilities and CATS facilities.
28 If, after proper notification through the State-Wide One-Call
29 Notice System and upon arrival at the site of a proposed
30 excavation, the excavator observes clear evidence of the
31 presence of an unmarked utility or CATS facility in the area of
32 the proposed excavation, the excavator shall not begin
33 excavating until 2 hours after an additional call is made to
34 the State-Wide One-Call Notice System for the area. The
35 operator of the utility or CATS facility shall respond within 2
36 hours of the excavator's call to the State-Wide One-Call Notice

1 System.

2 (j) The Illinois Commerce Commission shall have the power
3 and jurisdiction to, and shall, enforce the provisions of this
4 Act. The Illinois Commerce Commission may impose
5 administrative penalties as provided in this Section. The
6 Illinois Commerce Commission may promulgate rules and develop
7 enforcement policies in the manner provided by the Public
8 Utilities Act in order to implement compliance with this Act.
9 When a penalty is warranted, the following criteria shall be
10 used in determining the magnitude of the penalty:

- 11 (1) gravity of noncompliance;
- 12 (2) culpability of offender;
- 13 (3) history of noncompliance for the 18 months prior to
14 the date of the incident;
- 15 (4) ability to pay penalty;
- 16 (5) show of good faith of offender;
- 17 (6) ability to continue business; and
- 18 (7) other special circumstances.

19 (k) There is hereby created in the State treasury a special
20 fund to be known as the Illinois Underground Utility Facilities
21 Damage Prevention Fund. All penalties recovered in any action
22 under this Section shall be paid into the Fund and shall be
23 distributed annually as a grant to the State-Wide One-Call
24 Notice System to be used in safety and informational programs
25 to reduce the number of incidents of damage to underground
26 utility facilities and CATS facilities in Illinois. The
27 distribution shall be made during January of each calendar year
28 based on the balance in the Illinois Underground Utility
29 Facilities Damage Prevention Fund as of December 31 of the
30 previous calendar year. In all such actions under this Section,
31 the procedure and rules of evidence shall conform with the Code
32 of Civil Procedure, and with rules of courts governing civil
33 trials.

34 (l) The Illinois Commerce Commission shall establish an
35 Advisory Committee consisting of a representative from each of
36 the following: utility operator, JULIE, excavator,

1 municipality, and the general public. The Advisory Committee
2 shall serve as a peer review panel for any contested penalties
3 resulting from the enforcement of this Act.

4 The members of the Advisory Committee shall be immune,
5 individually and jointly, from civil liability for any act or
6 omission done or made in performance of their duties while
7 serving as members of such Advisory Committee, unless the act
8 or omission was the result of willful and wanton misconduct.

9 (m) If, after the Advisory Committee has considered a
10 particular contested penalty and performed its review
11 functions under this Act and the Commission's rules, there
12 remains a dispute as to whether the Commission should impose a
13 penalty under this Act, the matter shall proceed in the manner
14 set forth in Article X of the Public Utilities Act, including
15 the provisions governing judicial review.

16 (Source: P.A. 92-179, eff. 7-1-02.)

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.