

THE STATE OF NEW HAMPSHIRE

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December 4, 2008

Scott F. Eaton, Director
Administrative Rules Division
Office of Legislative Services
State House Annex, Room 219
25 Capitol Street
Concord, New Hampshire 03301

**Re: Puc 800 – Underground Utility Damage Prevention Program
DRM 08-091
Doc # 9318**

Dear Mr. Eaton:

Enclosed please find the edited copy of the Puc 800 rules which we have proofread, made changes and are returning to you.

We will await the camera ready version to be sent by your office.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Ducharme".

Jennifer Ducharme
Legal Assistant

Enclosure

STATE OF NEW HAMPSHIRE



DIRECTOR
CAROL J. HOLAHAN

OFFICE OF LEGISLATIVE SERVICES
STATE HOUSE
107 NORTH MAIN STREET, ROOM 109
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Date First Proofing Mailed 11-25-08

Doc. # 9318
Rule # PUC 800
Eff. Date 11-8-08

INSTRUCTIONS FOR PROOFREADING

Please find enclosed an edited copy of rules which your agency filed with our office in accordance with RSA 541-A. Please proofread this edited copy, as required by Part 2 of Chapter 5 of the NH Drafting and Procedure Manual for Administrative Rules (Manual). You should also check our editing carefully to make certain any editorial changes do not change the substance of your rule. Editorial changes have been limited to those designated in Section 2.2 of Chapter 5 of the Manual.

Please use the original rules to proof against, so that if we left out any material it will be quickly noticed. Check for typing errors and spelling errors. Use a red pen or pencil and underline the error as well as put a red check mark in the left margin to indicate what line the errors appear in.

You should note that we do not capitalize the names of New Hampshire agencies (such as boards, departments, commission) or titles (such as commissioner, director, bureau chief), because they are not capitalized in the law. If these items are not capitalized in the enclosed text, you should not mark them as errors.

Please return the enclosed copy promptly so that you will be able to meet the deadline in RSA 541-A:15, I-a. You must certify the final camera-ready version (which we will send you) within 120 days of receiving this first edited copy for proofreading.

The 120-day deadline for filing a certified camera-ready version of these rules is March '09.
(THIS IS A REASONABLE RETURN DATE ALLOWING FOR MESSENGER MAIL)

Thank you for your prompt attention to this matter. Please return the proofread copies of the enclosed rules to the Office of Legislative Services, Administrative Rules, 25 Capitol Street, Room 219, State House Annex. Please address all questions to Patty or Cheryl at 271-3680.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Puc 802.06 "Excavator" means "excavator" as defined in RSA 374:48, IV, namely, "any person performing an excavation."

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08 ; ss and moved by #9318, eff 11-8-08 (from Puc 802.05)

Puc 802.07 "Extraordinary circumstances" means events or conditions other than normal operating conditions which exist and make it significantly impractical or impossible for an underground facility owner or member owning and/or operating an underground facility to comply with the provisions of Puc 800, including, but not limited to, hurricanes, tornadoes, floods, ice or snow, and acts of God.

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08 ; ss and moved by #9318, eff 11-8-08 (from Puc 802.06)

Puc 802.08 "Hand digging" means any excavation involving non-mechanized tools or equipment and includes, but is not limited to, digging with shovels, picks, and manual post hole diggers.

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08; ss and moved by #9318, eff 11-8-08 (from Puc 802.07)

Puc 802.09 "Holiday" means any legal holiday pursuant to RSA 288:1 or, when such holiday falls on a Sunday, the following day pursuant to RSA 288:2.

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08; ss by #9318, eff 11-8-08

Puc 802.10 "Locator" means a person acting on behalf of an operator to identify and mark the locations of underground facilities in accordance with Puc 806.

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08; ss by #9318, eff 11-8-08

✓ Puc 802.11 "Notification center" means the entity that performs the primary function of the system, is open to all operators within the state of New Hampshire, maintains a data base of its members and operators and the specific geographic areas in which each of its members and operators desires to receive notice of proposed excavation, and which has the capability to transmit notices of proposed excavation to its members and operators by teletype, telecopy, personal computer, telephone, or other comparable means. *database*

Source. #7350, eff 8-23-00; ss by #7900, eff 5-29-03; ss and moved by #9318, eff 11-8-08 (from Puc 802.10)

Puc 802.12 "Operator" means "operator" as defined in RSA 374:48, IV-a, namely, "any public utility as defined in RSA 362:2 or RSA 362:4 and any cable television system as defined in RSA 53-C:1, and any liquefied petroleum gas company operating any jurisdictional facility or facilities as defined by the Natural Gas Pipeline Safety Act (49 U.S.C. chapter 601) that owns or operates underground facilities."

Source. #7350, eff 8-23-00; ss by #9226, INTERIM, eff 8-16-08; ss and moved by #9318, eff 11-8-08 (from Puc 802.11)

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✓
(4) Provide the excavator, at the time of initial contact, a registration number confirming the notification of intended excavation activity;

(5) Create a record, which shall include the material included in (6) below, of each notification of intent to engage in an excavation activity and related communication;

(6) Create, pursuant to (5) above, a record of each proposed excavation, including the following:

- a. The name of the person notifying the notification center;
- b. The name, address and telephone number of the excavator;
- c. The specific location, starting date, and description of the intended excavation activity;
- d. The name(s) of any sub-contractor or other person or entity who the excavator indicates may excavate at the intended excavation site on behalf of the excavator making the notification;
- e. The date and time of the notification;
- f. The confirmation or registration number;
- g. The identity of potentially affected members and operators that the notification center contacts to inform of the intended excavation activity;
- h. The date and time the notification center transmitted notice of the intended excavation activity to each potentially affected member and operator;
- i. The date and time the notification will expire in accordance with Puc 805.01(b); and
- j. As to any material follow-up communication relating to the proposed excavation activity directed to the communications center:
 1. The party or parties involved in the communication;
 2. The content of the communication;
 3. The date and time of the communication; and
 4. The date, time and recipient of any transmittal of the communication; and

(7) Maintain the record required to be kept by (5) and (6) above for a period of a minimum of 3 years from the date of the last communication.

(c) The current toll-free telephone numbers of the notification center for reporting proposed excavations and otherwise communicating with the notification center shall be, 888-“DIG-SAFE”, which is, 888-344-7233 or 811.

(d) The notification center shall also maintain an internet-based system for proposed excavations at www.digsafe.com.

(e) Operators and members of the notification center shall use communications equipment that shall be compatible with the notification center.

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- (14) The type of marking used at the location, if any;
- (15) Details fully describing whether:
 - a. The situation was an emergency;
 - b. The notification procedure was or was not followed as prescribed;
 - c. The notification was completed and, if so, provide the registration number and date of notification;
 - d. The notification was completed and the location was not premarked;
 - e. The notification was completed and the location was not marked;
 - f. The notification was completed but markings were not maintained;
 - g. The notification was completed, the location was marked, but markings were incorrect;
 - h. The notification was completed and the location was marked but damage occurred; and
 - i. The notification procedures were not followed and damaged occurred.

(d) If there are no reportable incidents during a month the operator shall file a one page notification report using Form E-26, on or before the 15th day of the following month, identifying the owner or operator and stating that no reportable incident of damage or a violation occurred during the month.

(e) The operator shall send the reporting form required by this section to the New Hampshire public utilities commission, safety division, at its mailing address as provided on the E-26 form or electronically as specified on the commission's web site.

Source. #2912, eff 11-26-84, EXPIRED: 11-26-90

New. #5616, eff 4-20-93, EXPIRED: 4-20-99

New. #7259, INTERIM, eff 5-2-00, EXPIRES: 8-30-00; ss by #7350, eff 8-23-00; ss by #7900, eff 5-29-03; ss by #9318, eff 11-8-08

Puc 804.02 Notification Requirements.

(a) Any operator who owns, operates, or both, an underground facility used in the transportation of gas or hazardous liquids and subject to the federal pipeline statute, 49 U.S.C. §§ 60101 to 60137, shall:

(1) Maintain a current list of the names and contact information of persons who normally engage in excavation activities in the area in which any underground facility is located, which is owned by that operator, and is used in the transportation of gas or hazardous liquids and subject to the federal pipeline statute; *Semi-Circle*

(2) Notify abutters of the existence of an underground facility used in the transportation of gas or hazardous liquids subject to the federal pipeline statute, owned by that operator; and

(3) Notify persons who normally excavate in the area in which an underground facility used in the transportation of gas or hazardous liquids subject to the federal pipeline statute owned by that operator, as often as needed to make them aware of the notification center, including:

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a. The notification center's existence and purpose; and

b. How to learn the location of underground facilities before excavation activities begin.

(b) An affected operator may complete the notification required by Puc 804.02(a)(2) above by:

- 
- (1) Distributing fliers;
 - (2) Informational mailings;
 - (3) Placing line markers;
 - (4) Signage; or
 - (5) Other reasonable public education outreach consistent.

(c) An affected operator may complete the notification required by Puc 804.02(a)(3) above by means including but not limited to distributing informational mailings, conducting informational sessions, or both.

(d) An operator who participates in an underground utility damage prevention system shall not be required to locate underground facilities not owned by the operator. Underground facilities which the owner shall not be required to locate shall include, but shall not be limited to, facilities running from a house to a garage or other outbuilding.

(e) When no underground facility is within the area of a proposed excavation, an owner or operator receiving notification of the proposed excavation shall so advise the excavator by:

- 
- (1) Marking the non existence of facilities within the premarked area of intended excavation in accordance with Puc 806;
 - (2) Participating in a meeting where details of the job site are discussed and documented; or
 - (3) ^{EXTRA SPACE} Communicating with the operator via e-mail, fax, telephone or other electronic communication, provided that the excavator confirms receipt of such communication.

Source. #2050, eff 6-13-82; ss by #2912, eff 11-26-84, EXPIRED: 11-26-90

New. #5616, eff 4-20-93, EXPIRED: 4-20-99

New. #7259, INTERIM, eff 5-2-00, EXPIRES: 8-30-00; ss by #7350, eff 8-23-00; ss by #7900, eff 5-29-03; ss by #9318, eff 11-8-08

Puc 804.03 Training of Locators.

(a) Locators shall be trained in accordance with National Utility Locating Contractors Association (NULCA) standards as adopted on December 21, 2001, including the competencies as described in (b) below.

(b) To meet the requirements of (a), training programs for locators shall include, at a minimum, the following competencies:

- (1) Electromagnetic locating;

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- (2) Instruction in the use of transmitters and receivers;
- (3) Procedures for marking underground facilities;
- (4) Training in the identification of facilities;
- (5) Safety procedures;
- (6) Operator map and record reading; and
- (7) Familiarity with the rules in this chapter.

Source. #9318, eff 11-8-08

PART Puc 805 DUTIES OF AN EXCAVATOR

Puc 805.01 Notification Required Prior to Excavation.

(a) Excavators shall, pursuant to RSA 374:51, notify the notification center:

- (1) Not less than 72 hours prior to a proposed excavation, not including Saturdays, Sundays and legal holidays; and
- (2) Not more than 30 days prior to a proposed excavation ~~is~~ to be made.

(b) The excavator's notification, required by (a) above, shall be valid for 30 calendar days from the date and time the notification center confirms the notification.

(c) When an excavator contacts the notification center as described in (a) above, it shall provide the following:

- (1) The name of the person notifying the notification center;
- (2) The name, address and telephone number of the excavator;
- (3) ~~The~~ ^{NO extra space} name of each sub-contractor or other person or entity who might excavate at the intended excavation site on behalf of the excavator making the notification; and
- (4) The specific location, starting date, and description of the intended excavation activity.

(d) Prior to complying with the notification requirements of RSA 374:51, II and (a) above, an excavator shall, pursuant to RSA 374:51 ^{IV}, premark the area of proposed excavation by identifying the perimeter of the proposed site of the excavation. ^{NO extra space}

(e) The excavator shall premark in a way that does not interfere with traffic or pedestrian control and is not misleading to the general public.

(f) An excavator shall not be required to premark any continuous excavation that is over 100 feet in length, or any pole replacement that is within 5 feet of an existing location.

(g) If an excavation is over 100 feet in length or a pole replacement is within 5 feet of an existing location, the excavator shall communicate the perimeter of the excavation to any potentially affected operator, member of the notification center who owns or operates an underground facility, or both by:

- (1) Providing a detailed description of the site area;

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- (2) Providing detailed construction plans;
- (3) Holding an on-site meeting with potentially affected operators; or
- (4) ^{no extra space} Providing other suitable means of communicating the perimeter of the excavation to any potentially affected operator, member, or both, of the notification center who owns or operates an underground facility.

(h) Once an owner or operator of an underground facility has marked the location of its underground facility in the area of an excavation, pursuant to RSA 374:53 and Puc 805.02, the excavator, and any subcontractor, employee or agent of the excavator performing work on behalf of the excavator at the site, shall be responsible for maintaining the markings during the excavation.

(i) No person or entity not an employee of the excavator shall excavate on behalf of an excavator as a subcontractor or otherwise without separately complying with the notification requirements of this section, unless the excavator has notified the notification center of the identity of that person or entity as provided in (c)(3) above.

(j) A subcontractor of the excavator or other entity may excavate pursuant to the excavator's notification to the notification center if the subcontractor or entity:

- (1) Performs excavation at the location specified in the notification;
- (2) Has a contract to perform this excavation with the excavator;
- (3) Does the excavation work specified in the notification;
- (4) Is listed with the notification center, as provided in (c) ^{no space} (3) above; and
- (5) Otherwise complies with Puc 800, RSA 374:48-56 and other applicable law.

(k) No person shall misuse the intent of the notification center by making a request for marking of an underground facility for other than excavating activities, such as for conducting an engineering design without intending to excavate at the site in question within 30 days.

Source. #5616, eff 4-20-93, EXPIRED: 4-20-99

New. #7259, INTERIM, eff 5-2-00, EXPIRES: 8-30-00; ss by #7350, eff 8-23-00; ss by #7900, eff 5-29-03; ss by #9318, eff 11-8-08

Puc 805.02 Excavation That Affects the Tolerance Zone.

(a) Any person conducting excavation activity that affects the tolerance zone surrounding an underground facility shall exercise at all times such reasonable care as is necessary to protect the underground facility from damage.

(b) Except as provided in (c) below, in order to locate and identify an underground facility, the excavator shall excavate by methods limited to:

- (1) Hand digging;
- (2) Pot holing;

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(e) If the parties request, pursuant to Puc 200, a determination by the commission as whether a situation is, or was, an emergency situation, the commission shall make such a determination based on a review of the facts of the situation and the definition of emergency situation.

Source. #5616, eff 4-20-93, EXPIRED: 4-20-99

New. #7259, INTERIM, eff 5-2-00, EXPIRES: 8-30-00; ss by #7350, eff 8-23-00; ss by #7900, eff 5-29-03; ss by #9318, eff 11-8-08

Puc 805.04 Blasting.

(a) When an excavator determines that blasting will be required during an excavation, the excavator shall inform the notification center when providing notice of the excavation.

(b) If an excavator determines during the effective term of the excavator's notification that blasting is required within the area premarked in accordance with Puc 805.01 (d), the excavator shall notify the notification center of the need to blast. Notification shall be made at least 24 hours prior to any blasting, not including Saturdays, Sundays, and holidays.

(c) When unanticipated obstructions prevent further excavation without blasting, the excavator shall provide separate notice of such blasting not less than four hours in advance of such blasting, not including the hours of 4:00 p.m. to 6:00 a.m. weekdays, or all of Saturdays, Sundays, and holidays.

Source. #9318, eff 11-8-08

Puc 805.05 Damage to an Underground Facility.

(a) When an excavator causes any damage to an underground facility not owned or operated by the excavator, the excavator shall:

(1) Call 911 when:

a. A gas underground facility is damaged and there is a release of gas;

b. An electric underground facility is damaged and an excavator determines that a person may have received an electric shock; or

c. Any other facility is damaged and public safety is affected. *pericd*

(2) Evacuate nearby structures if necessary;

(3) Contact the facility owner or operator;

(4) Attempt no repairs, unless directed to by the facility owner or operator;

(5) Call 811 or 888-DIG SAFE (Notification Center); and

(6) Report the damage to the commission.

Source. #9318, eff 11-8-08

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PART Puc 806 MARKING THE TOLERANCE ZONE

Puc 806.01 Tolerance Zone.

(a) An operator shall use one of the following marking methods to mark the tolerance zone of an underground facility:

(1) The corridor marking method which shall be the practice of placing markers at either boundary of the tolerance zone, such that the markers will be 18 ^{N/A}~~inches~~ _{inches} plus one-half the width of the facility away from the facility centerline;

(2) The centerline marking method which shall be the practice of placing markers directly over the centerline of the facility establishing boundaries at points located 18 inches plus one-half the width of the facility from the markers; or

(3) The offset marking method which shall be the practice of locating the centerline of the facility and placing markers at locations which parallel the facility.

(b) Any operator shall use the offset marking method only when it is impractical to use either the corridor or centerline methods, such as in marking in the traveled portion of an unpaved roadway.

(c) When marking an underground facility an operator shall mark the underground facility consistent with the color code for the utility type of the underground facility, as set forth in Puc 806.02.

(d) In the event an operator maintains 2 or more underground facilities in close proximity to each other within the area of the proposed excavation activity, and the corridor marking method is to be applied, the operator may mark one tolerance zone.

(e) When an operator marks 2 or more underground facilities as described in (d) above:

(1) The operator shall establish the boundaries of the tolerance zone by use of the corridor marking method by locating the boundaries of each separate underground facility and placing markers at the outer boundaries of the multiple underground facilities; and

(2) When the marking results in one area being marked, the operator shall inform the excavator of the marking of each of the separate underground facilities within the marked boundaries, either verbally or by appropriate single markings pursuant to Puc 806.01.

(f) When an operator maintains 2 or more underground facilities in close proximity to each other within the area of the proposed excavation and the centerline marking method is to be applied, the operator shall place markers, conforming with Puc 806.01(a)(2), over the centerline of each facility.

(g) In the event the operator or member who owns and/or operates an underground facility is unable to designate the location of the underground facility due to extraordinary circumstances, the operator or member shall notify the notification center and provide an estimated completion date. The notification center shall then document on the existing notification ticket, utilizing an attachment message, that the utility is unable to designate the location of the underground facility. The operator shall notify the excavator who

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called the notification center that it is unable to designate the location of the underground facility due to extraordinary circumstances.

Source. #5616, eff 4-20-93, EXPIRED: 4-20-99

New. #7259, INTERIM, eff 5-2-00, EXPIRES: 8-30-00; ss by #7350, eff 8-23-00; ss by #7900, eff 5-29-03; ss by #9318, eff 11-8-08

Puc 806.02 Markers.

(a) Within 72 hours after receipt of notice from a proposed excavator or from the notification center of a proposed excavation, but not including Saturdays, Sundays and holidays, an operator or member of the notification center who owns or operates an underground facility, shall

(1) Mark the location of its underground facility in the area of the proposed excavation; or

(2) ^{no extra space} If no underground facility is within the area of the proposed excavation, so notify the excavator pursuant to Puc 804.02(e).

(b) An operator who participates in an underground utility damage prevention system shall not be required to locate underground facilities not owned by the operator. Underground facilities which the owner shall not be required to locate shall include, but not be limited to, facilities running from a house to a garage or other outbuilding.

(c) An operator shall mark underground facilities by the use of paint, stakes, flags, or by any other means that clearly indicates the location of the underground facility.

(d) An operator shall consider the physical characteristics in the area of the proposed excavation in determining the type of marker to be used.

(e) Operators shall mark underground facilities according to the following color code:

(1) Red shall be used for underground facilities conveying electric power, electric cable conduits or lighting cables;

(2) Yellow shall be use for underground facilities conveying gas, oil, steam, petroleum, or gaseous materials;

(3) ^{no extra space} Orange shall be used for underground facilities used for communications, alarm, signal, communications cables, or communications conduit;

(4) Blue shall be used for underground facilities conveying water or used for irrigation or slurry lines; and

(5) Green shall be used for underground facilities conveying sewer or used for drain lines.

(f) Excavators shall use the color white for the pre-marking of the boundaries of a proposed excavation, except as provided in (g) below.

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- (1) Receive and respond to emergency notifications; and
- (2) Mark the location of facilities in emergency situations.

Source. #7350, eff 8-23-00; ss by #7900, eff 5-29-03; ss by #9318, eff 11-8-08

Puc 806.05 Marking Certain Newly Installed Underground Facilities.

(a) Upon completing the installation of new underground facilities within an area that has been subject to excavator notification and premarking pursuant to Puc 805.01, an operator shall make reasonable efforts to communicate the existence of such facilities if they are covered with soil or other material that impairs their visibility.

(b) For purposes of (a) above, reasonable efforts shall include:

- (1) Marking the tolerance zone in accordance with 806.01, 806.02, 806.03, and 806.04;
- (2) Contacting the excavator with information regarding the presence of the newly constructed facilities; or
- (3) Leaving a tag or marker clearly indicating the presence of the newly constructed facilities with contact information.

Source. #9318, eff 11-8-08

PART Puc 807 ENFORCEMENT PROCEDURES

Puc 807.01 Investigation of Complaints.

(a) The notification center shall institute procedures to receive and resolve complaints of excavators, operators, owners or operators of underground facilities, members, and the general public.

(b) Owners and operators of underground facilities shall institute procedures to receive and resolve complaints of excavators and the general public.

(c) The commission staff shall consider and decide unresolved complaints pursuant to the procedures established in Puc 200.

(d) An unresolved dispute relating to Puc 800 which is appealed in writing to the commission shall be handled as follows:

- (1) The matter shall be treated as a request for an adjudicatory proceeding; and
- (2) The parties to the dispute shall have a right of appeal by petition to the New Hampshire Supreme Court pursuant to RSA 541:6.

Source. #5616, eff 4-20-93, EXPIRED: 4-20-99

New. #7259, INTERIM, eff 5-2-00, EXPIRES: 8-30-00; ss by #7350, eff 8-23-00; ss by #7900, eff 5-29-03; ss by #9318, eff 11-8-08