



STRUCTURE, RULES, AND PROCEDURES

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Article 1: Structure of the West Virginia Underground Facilities Damage Prevention Board.

Section 1: Structure of Board

The Board consists of 10 members, appointed as follows:

1-1-1 Members are to be appointed by the Governor 10 members to 4-year terms and will be made up by the following:

- a.) The President of Miss Utility of West Virginia or the President’s designee;
- b.) One member of the excavation, utility, or site construction industry;
- c.) One member of the natural resource extraction industry;
- d.) The Executive Director of the West Virginia Municipal League or its designee;
- e.) The Executive Director of the West Virginia Rural Water Association or its designee;
- f.) One representative of the natural gas transmission or distribution or hazardous liquid industry;
- g.) One representative of the electric, cable, or communications industry;
- h.) One representative of the privately-owned water and/or wastewater services industry;
- i.) One representative from the general public; and
- j.) The Chairman of the Public Service Commission or the chairman’s designee;

Source: WV §24C-1-2a

1-1-2 WV 811 shall provide the Board with an Executive Secretary to the West Virginia Underground Damage Prevention Board, the Executive Secretary shall act as

- a.) The record custodian.
- b.) Chief investigator.
- c.) Report to and provide information to the Board.

Section 2. Officers of the WV Damage Prevention Board:

The officers of the board shall be as follows:

1-2-1. Chairman. The Chairman shall preside at all meetings of the Board and discharge the duties of the presiding officer, shall be the principal executive officer of the Board, may sign contracts and other instruments authorized by the Board, except in cases where the Board shall expressly delegate that authority to another member, and shall perform whatever other duties the Board may from time to time prescribe.

1-2-2 Vice-Chairman. The Vice-Chairman shall, in the absence of the Chairman, perform the duties and exercise the powers of the Chairman. The Vice-Chairman shall also perform whatever duties and have whatever powers the Board may from time to time assign.

1-2-3 Secretary. The Secretary shall attend all meetings of the Board and shall keep or cause to be kept, true and complete minutes of the proceedings of those meetings. The Secretary shall give or cause to be given, notice of all meetings of the Board, shall be the Public Records Compliance Officer and whatever additional duties the Board may from time to time prescribe.

1-2-4 Treasurer. The Treasurer shall keep full and accurate accounts of receipts and disbursements and shall deposit all Board monies and other valuable effects in the name and to the credit of the Board in a depository or depositories designated by the Board. The Treasurer shall disburse the funds of the Board and shall render to the Chairman or the Board, whenever they may require it, an account of the transactions as Treasurer and the financial condition of the Board. Disbursements of the Board shall require two signatures.

1-2-5 Combination of Offices. Nothing herein shall prohibit the combination of the duties of Secretary and Treasurer and those offices being held by one member of the Board.

1-2-6 Other Officers. Such other officers as are created from time to time by the Board shall have such duties as may be assigned to them by the Board in the minutes of meetings duly adopted, or by Resolution of the Board.

1-2-7. Office Elections. Every two years, the board shall elect a chair and other officers from among its members as the Board deems necessary.

Source: WV §24C-1-2a

Article 2: Operations of the WV Underground Damage Prevention Board

Section 1: Board Operations

2-1-1. Rule Making Authority. The Board shall make such rules and regulation as may be necessary to carry out the provisions of the statute.

Source: WV §24C-1-2a

2-1-2. Meetings and Notice. The Board shall meet at the location and on the date and time set by the Chairman upon at least five business days' notice provided by United States mail, electronic mail or personal delivery to every board member. Meeting dates, times, and locations shall be published in the Board's minutes. The Board shall meet no less than two times each calendar year.

Source: WV §24C-1-2a

2-1-3. Audio Meetings. Any Meeting of the Board may be conducted through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

Source: WV §24C-1-2a

2-1-4. Quorum. Six (6) members of the board shall constitute a quorum.

Source: WV §24C-1-2a

2-1-5. Voting. All members of the Board including the Chairman shall be entitled to vote and to make or second motions. A majority vote of those present is required to pass a motion. A member expecting to be absent for a vote may provide written comments as to his position; however, he may not grant a vote by proxy.

Source: WV §24C-1-2a

2-1-6. Action without a Meeting. Any action required or permitted may be taken without a meeting if the action is noticed to all Board Members and approved by a majority of the Members of the Board. The action must be evidenced by one or more written consents describing the action taken and delivered to the Secretary for inclusion in the minutes or filed with the appropriate records.

Source: WV §24C-1-2a

2-1-7. Robert's Rules of Order. The Chairman shall conduct each Board meeting in accordance with Robert's Rules of order. Committee meetings of the Board shall be conducted in a like manner.

Source: WV §24C-1-2a

2-1-8. Presumption of Assent. A member who is present at a meeting of the Board at which action is taken on any matter shall be presumed to have assented to the action taken unless:

- a.) Such member objects at the beginning of the meeting (or promptly upon such member's arrival) to holding or transacting business at the meeting;

- b.) Such Member’s dissent or abstention from the action taken is entered in the minutes of the meeting; or
- c.) Such Member delivers written notice of such Member’s dissent or abstention to the presiding officer of the meeting immediately after the adjournment of the meeting.

Source: WV §24C-1-2a

Section 2: Committees of the Board

2-2-1 The Chairman, with concurrence of the Board, may from time to time establish and abolish such committees from among the members of the board as may be deemed necessary, expedient or to contribute to the performance of the duties of the Board. The Chairman shall appoint a Chair for each such committee.

2-2-2 The Chairman, with concurrence of the Board, deems it advantageous or beneficial to the Board, the Chairman may appoint members to a committee.

2-2-3 All Committee members shall serve at the pleasure of the Chairman of the Board. A quorum shall be a majority of the committee. The rules relating to the Board shall apply to all committees.

Source: WV §24C-1-2a

Section 3: Open Records

2-3-1. Scope. This Rule is adopted pursuant to the requirements of the “West Virginia Freedom of Information Act of 1977” (Freedom of Information Act W.Va. Code §29B-1-1 et seq). Except as provided or authorized by WV Code §29B-1-1 or as may be otherwise provided by law, all records of the Board are hereby declared to be public property. All persons shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of such documents as are in the possession of the Board and in accordance with reasonable written procedural rules adopted by the Board.

Source: Freedom of Information Act W.Va. Code §29B-1-1 et seq

2-3-2. Informal Requests. It is the policy of the Board to encourage and promote public participation in Board affairs and, toward that end, the Board its desire and intent to promptly honor all requests for access to or copies of all documents in the possession of the Board. Informal requests for information or documents may be made orally or in writing to the Executive Secretary of the Board and all reasonable efforts will be made to comply promptly with such requests. Informal request shall not be considered as requests made under the provisions of the “West Virginia Freedom of Information Act of 1977”

Source: Freedom of Information Act W.Va. Code §29B-1-1 et seq

2-3-3. Formal Requests. A formal request for documents may be made to the Board pursuant to the provisions of this rule. The Executive Secretary is designated as the Public Records Compliance Officer.

- a.) Form.

(1) Any individual seeking to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of the board should make a written request, signed by themselves to be mailed or hand-delivered to the Executive Secretary.

(2) The written request must be typed or clearly hand printed on a letter size piece of paper and shall specify in detail the public record sought. The request should include, if possible, a description of the type of record, dates, title of a publication, and other information which may aid in locating the record.

(3) The written request must specify what the applicant proposes to do with the record, i.e., inspect, copy, etc. state the date and time for the proposed activity; state the number of persons scheduled to participate; and shall provide the name, address, and home and office telephone number of the applicant.

b.) Time. The Executive Secretary, upon receipt of any such request, shall review same and determine whether the records sought are exempt under the West Virginia Freedom of Information Act, and shall either produce records or access to records or deny access to or production of the records sought within seven (7) working days from the date of the receipt of the request for the production of the record. If the Board is unable to produce a public record by the seventh working day after the request is made, the Board will provide a written explanation to the person making the request stating that the record requested will be produced and specifying with particularity why the records cannot be produced within the seven-day period. Unless there is a mutual agreement of the parties, in no event shall the date for the Board's production of the request records be any later than fourteen (14) working days from the receipt of the original request.

b.) Copying. All inspection, copying or mechanical reproduction shall be done in the offices of the Board or such other reasonable place within the State of West Virginia as may be designated by the Board. It shall be the duty of the applicant to contact the Executive Secretary by phone before noon of the first working day preceding the proposed date set out in the application to determine if same is acceptable and, if not, what date and/or time will be substituted. c.) Charges.

(1) The Executive Secretary is authorized to calculate the estimated cost of searching, obtaining from storage, reviewing, shipping and/or duplicating records and to require payment in advance of such estimated charges prior to complying with the request. There shall be reasonable charge to be determined by the Board per page for each copy. Copies printed on both sides (front & back) shall be considered as two pages for copy charge purposes. Mailing cost shall be calculated at the applicable rate for each such mailing. If request involves notice to be given to a third party, the cost of mailing such notice via certified mail return receipt requested shall be charged to the person requesting such public records. In the event the actual cost of such activity exceeds the estimate, the Board is authorized to withhold mailing or delivery of said documents or to delay the inspection until the difference is paid.

(2) There shall be no charge for inspection of the current Board's records maintained at the Board office. Cost of obtaining records from any state storage facilities and the search for it shall be charged to the applicant.

(3) The Executive Secretary may waive any or all of the foregoing requirements related to written notice, time, and method of access prepayment of expenses whenever the determination is made that such waiver would be in the public interest.

Source: Freedom of Information Act W.Va. Code §29B-1-1 et seq

2-3-4. Exempt Materials. If the Executive Secretary determines that the records requested are exempt or privileged under the law, the Executive Secretary shall deny the request and shall send the person making the request a statement of the specific exemption relied upon by the Board for the denial. Such denials shall be kept on file for inspection by any person for three (3) years. This file shall be made available for inspection or copying or both during regular office hours to any person upon written request.

Source: Freedom of Information Act W.Va. Code §29B-1-1 et seq

Section 4: Open Meetings

2-4-1. This rule is adopted pursuant to the West Virginia Open Meetings Law, (WV Code §69A-1). All meetings and hearings of the Board shall be open to the general public with the exception of executive sessions held in conformity with the provisions of the WV Code §6-9A-1. Members of the general public are welcome to attend meetings of the Board and are subject to the following standards of conduct:

- a.) Members of the public, who wish to address the Board, are requested to register with the Executive Secretary of the Board. Organized groups must have one (1) spokesperson. b.) Upon request, an individual or spokesperson will be allowed to address the Board. Speaking time will be limited to 10 minutes, but may be extended by the presiding officer. The Board may, at its discretion, limit the number of people who wish to speak on any one issue.
- c.) When the Board votes to go into Executive Session, all members of the general public must leave the meeting room.
- d.) Members of the general public will behave in a calm, professional manner and will not attempt to directly or indirectly interrupt a meeting of the Board.
- e.) Any member of the general public who does not comply with these rules will be asked to leave the meeting, and upon their refusal will be removed from the meeting.

Source: WV Code §6-9A-1

2-4-2. If members of the general public require special provisions accommodating a qualifying temporary or permanent disability in order to attend a Board meeting, a written request identifying the disability and the accommodations needed must be submitted to the Secretary prior to the meeting. If

said request is not submitted in advance and in a timely manner, the availability of on-site accommodations is not guaranteed.

Source: WV Code §6-9A-1

Article 3: Procedures for Implementation of B24C-1-9. Civil Enforcement by the West Virginia Underground Damage Prevention Board (WVDPB) and the Role of the Executive Secretary.

Section 1: Routine Enforcement by the Executive Secretary

3-1-1. Where upon initial review of a complaint, documents submitted simultaneously therewith, and the applicable locate ticket or tickets provided by West Virginia 811, the Executive Secretary may issue a citation to the respondent if the Executive Secretary determines:

- a.) The alleged violation falls within a category of violations described in Rule 3-2-1 and that a violation has occurred based exclusively on information included in the submitted complaint, the documents provided therewith, and the applicable locate ticket or tickets provided by West Virginia 811.

Source: WV §24C – 1-9

3-1-2. The Executive Secretary may issue citations without any further investigation or executive committee action, for the following violations:

- a.) The excavation complained of occurred after the expiration of the subject locate ticket.
- b.) The excavation complained of commenced less than two working days from the time West Virginia 811 processed the locate ticket for the planned excavation.
- c.) The excavator failed to make a utility locate request with West Virginia 811 prior to commencement of the subject excavation.
- d.) The utility owner or operator fails to comply with the deadlines set forth in WV B24C 1-9

Source: WV §24C – 1-9

Article 4: Procedures for Implementation of B24C-1-9. Civil Enforcement by the West Virginia Underground Damage Prevention Board (WVDPB).

Section 1: Investigation

4-1-1. Once a month, or as the data permits, the West Virginia Underground Damage Prevention Board Executive Secretary (Executive Secretary) shall analyze the data collected for WV811.

4-1-2. Within the data the Executive Secretary will look for those instances where an underground facility was damaged as a result of violating entity failing to notify WV811. The Executive Secretary

also investigates all complaints provided on the WV811 website. This is congruent with B24C-1-9. Civil enforcement:

“(a) Any person who violates this article by failure to notify the one-call system, or who violates the rules proposed or promulgated under this article, shall be subject to civil penalty...” 4-1-3. Instances warranting investigation by the Board and Executive Secretary:

- a.) Excavating without a one call ticket.
- b.) Excavating before 48 hours or all effective parties respond to the locate request. c.) Failure to locate.
- d.) Did not locate in required time, unless a good faith agreement between the parties existed.

4-1-4. WV811 will provide a space on its website for individuals and facility owners to call and provide information regarding a violation.

4-1-5. The Board shall also receive complaints via, US mail, telephone, and email.

4-1-6. Within 10 days upon the receiving of a complaint from the WV 811 website the response material is combined and forwarded to the Executive Secretary where a case number is assigned.

4-1-7. Each complaint shall be entered in a data base which will include the following variables: a.)

- Complainants Name.
- b.) Complainants Company.
- c.) Complainants Email.
- d.) Complainants Address.
- e.) Complainants Phone.
- f.) Date of Complaint.
- g.) Date of Violation.
- h.) Location of Violation.
- i.) Type of Violation.
- j.) Documentary evidence if any is available.
- k.) Name of Violating Entity (if known).
- l.) Violator’s address (if known).
- m.) Violator’s phone number (if known).
- n.) Violator’s email (if known).

0) Date entered into the data base.

4-1-8. Each case will be reviewed by Executive Secretary to determine:

- a.) Gravity of non-compliance with the law.
- b.) The alleged violator's culpability.
- c.) The alleged violator's history of non-compliance.
- d.) The alleged violator's ability to pay the penalty.
- e.) The alleged violator's good-faith in attempted to comply with the law.
- f.) The alleged violator's ability to continue in business.
- g.) Any other circumstances relevant to the matter.

4-1-9. Within 30 calendar days of receipt of the complaint to WV811, the Violating Entity, if known, shall receive a notice that a complaint has been made. The document shall include at a minimum.

- a.) Date of alleged violation.
- b.) Location of Violation
- c.) Explanation or description of violation
- d.) Any documentary evidence provided in the complaint.
- e.) Explanation of penalties assessed.
- f.) Explanation of how to meet the requirements of the citation.

Section 2: Enforcement Process

4-2-1. If this is the first offense for the Violating Entity, a certified letter shall provide instructions for completing the WV Underground Damage Prevention Board training and accompanying documentation to prove the training was completed.

4-2-2. The Violating Entity has 30 days upon receiving the certified letter to complete the training and turn in any accompanying documentation.

4-2-3. West Virginia 811, Inc. forwards a monthly report of all alleged or presumed violations, along with any accompanying information, to the Executive Secretary.

4-2-4. Should this be a second, or more, violation within a five-year period where a civil fine can be implemented, review of the complaint is to be taken up by the Board.

4-2-5. If a second violation (or more) occurs by a Violating Entity and goes in front of the Board, the Violating Entity shall receive a letter stating date, time and meeting place no less than 30 days prior to the meeting, as well as the Board report regarding the violation. The Violating Entity will then have an opportunity to provide any additional information. The additional information must be provided to the Board by the Violating Entity 5 business days prior to the meeting.

4-2-6. The aforementioned process shall be repeated for each violation beyond the second violation.

4-2-7. Penalties and costs shall be paid to the Board in any method adopted by the Board.

Source: WV §24C – 1-9

Section 3: Hearing and Appeal Process

4-3-1. 4-3-1. If the Violating Entity to whom the citation is issued under Section 2 of this Article does not pay the citation or submit to ordered training, or both, within thirty (30) days, then the West Virginia Underground Damage Prevention Board shall conduct a hearing and issue an initial

order. The hearing shall be held at the time and place set forth in the citation notice of hearing. The hearing shall be conducted in the county where the excavation referenced in the citation occurred, unless otherwise agreed to by the Violating Entity to whom the citation was issued. In the event the excavation occurred in more than one (1) county, then the hearing shall be conducted in the county where the greatest amount of excavation referenced in the citation occurred.

4-3-2. Should a Violating Entity object to the complaint they may appeal to the Board. Appeal filings must include the form titled West Virginia Underground Damage Prevention Board Notice of Appeal form.

4-3-3. The Board shall review an objection to the complaint by the Violating Entity using the following considerations:

- (1) The violation reports.
- (2) The result of the Executive Secretary's report.
- (3) Correspondences from the parties involved.
- (4) Any other pertinent information.

4-3-4. The Board will have until the scheduled meeting to investigate and resolve the appeal by the Violating Entity.

4-3-5. An appeal of the initial order shall be heard by the Board.

4-3-6. A person aggrieved by the final order may, within sixty (60) days, seek judicial review in the Circuit Court of Kanawha County, West Virginia.

4-3-7. Evidence of findings of fact, civil penalties, or any of the actions or proceedings pursuant to this chapter shall not be admissible in any other civil causes of action. This chapter shall not limit any person's right to pursue any additional civil remedy otherwise allowed by law.

Appendix

Section 1: Definitions

As used in this chapter, unless the context clearly requires a different meaning:

- (a) "Citation" means any written communication regarding a violation in support of enforcement under the powers of the West Virginia Underground Damage Prevention Board. Citations may range from warning letter to maximum penalty allowed under law.
- (a) "Damage" means any impact or contact with or weakening of the support for an underground facility, its appurtenances, protective casing, coating or housing, which, according to the operation practices of the operator or state or federal regulation, requires repair.
- (b) "Demolish" or "demolition" means any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment or discharge of explosives which could damage underground facilities: Provided, That "demolish" and "demolition" do not include earth-disturbing activities authorized pursuant to the provisions of article three, chapter twenty-two of this code or article two, chapter twenty-two-a of this code.
- (c) "Emergency" means:
 - (1) A condition constituting a clear and present danger to life, health or property by reason of escaping toxic, corrosive or explosive product, oil or oil-gas or natural gas hydrocarbon product, exposed wires or other breaks or defects in an underground facility; or
 - (2) A condition that requires immediate correction to assure continuity of service provided by or through an underground facility.
- (d) "Equipment operator" means any individual in physical control of powered equipment or explosives when being used to perform excavation work or demolition work.
- (e) "Excavate" or "excavation" 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 explosives, and includes, without limitation, grading, trenching, digging, ditching, dredging, drilling, auguring, tunneling, moleing, scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving or removing any structure or mass of material, but does not include underground or surface mining operations or related activities or the tilling of soil for agricultural purposes or for domestic gardening. Further, for purposes of this article, the terms "excavate" and "excavation" do not include routine maintenance of paved public roads or highways by employees of state, county or municipal entities or authorities which:
 - (1) Perform all work within the confines of the traveled portion of the paved public way; and
 - (2) Do not excavate to a depth greater than twelve inches measured from the top of the paved road surface.
- (f) "Excavator" means any person intending to engage or engaged in excavation or demolition work.

- (g) "Member" means a member of a one-call system as authorized by this article.
- (h) "One-call system" means a communication system that receives notification from excavators of intended excavation work and prepares and transmits such notification to operators of underground facilities in accordance with this article.
- (i) "Operator" means any person who owns or operates an underground facility used in the providing or transmission of any of the goods or services described in subsection (1) of this section.
- (j) "Person" means any individual, firm, joint venture, partnership, corporation, association, state agency, county, municipality, cooperative association or joint stock association, and any trustee, receiver, assignee, agency or personal representative thereof.
- (k) "Powered equipment" means any equipment energized by an engine, motor or hydraulic, pneumatic or electrical device and used in excavation or demolition work.
- (l) "Underground facility" means any underground pipeline facility, owned by a utility and regulated by the Public Service Commission, which is used in the transportation or distribution of gas, oil or a hazardous liquid; any underground pipeline facility, owned by a company subject to the jurisdiction of the federal energy regulatory commission, which is used in the gathering, transportation or distribution of gas, oil or a hazardous liquid; any underground production or gathering pipeline for gas, oil, or any hazardous substance with a nominal inside diameter in excess of four inches and that is not otherwise subject to one-call reporting requirements under federal or state law; any underground facility used as a water main, storm sewer, sanitary sewer or steam line; any underground facility used for electrical power transmission or distribution; any underground cable, conductor, waveguide, glass fiber or facility used to transport telecommunications, optical, radio, telemetry, television, or other similar transmissions; and any facility used in connection with any of the foregoing facilities on a bridge, a pole or other span, or on the surface of the ground, any appurtenance, device, cathodic protection system, conduit, protective casing or housing used in connection with any of the foregoing facilities: Provided, That "underground facility" does not include underground or surface coal mine operations.
- (m) "Workday" means any day except Saturday, Sunday or a federal or state legal holiday.
- (n) "Work site" means the location of excavation or demolition work as described by an excavator, operator, or person or persons performing the work.

Section 2: The Law: WV §24C-1-2a

B24C-1-2a. Underground Facilities Damage Prevention Board.

- (a) There is hereby created an Underground Facilities Damage Prevention Board for the purpose of enforcing this article.
- (b) It is the intent of the Legislature that the board and its enforcement activities shall not be funded by appropriations from the state budget. All civil penalties imposed and collected by the

board shall not revert to the General Fund but shall be retained for the exclusive use of the board pursuant to this article.

(c) The board shall have the power and authority to investigate damage to underground facilities caused by an excavator. The board may consult with the Public Service Commission as needed regarding investigation of damages to underground facilities under its jurisdiction. The commission shall collect from the board any expenses incurred during the consultation. The board shall furnish to the commission at least annually electronic copies of all reports of investigations and enforcement activities conducted by or on behalf of the board.

(d) The board shall be composed of 10 voting members who shall be appointed by the Governor to serve four-year terms in accordance with West Virginia law. The board shall be empowered to establish one or more subcommittees in performing its tasks. Appointments to the board shall be made as follows:

- (1) The President of Miss Utility of West Virginia or the president's designee;
- (2) One representative of the excavation, utility, or site construction industry;
- (3) One representative of the natural resource extraction industry;
- (4) The Executive Director of the West Virginia Municipal League or its designee;
- (5) The Executive Director of the West Virginia Rural Water Association or its designee;
- (6) One representative of the natural gas transmission or distribution or hazardous liquid industry;
- (7) One representative of the electric, cable, or communications industry;
- (8) One representative of the privately-owned water and/or wastewater services industry;
- (9) One representative from the general public; and
- (10) The Chairman of the Public Service Commission or the chairman's designee.

(e) The board shall meet not less than twice per year, with a date and time to be set by its chairman upon at least five days' notice provided by United States mail, electronic mail, or personal delivery to every board member. The board may hold meetings and vote by telephone, video connection, computer, or other electronic means.

(f) Six members of the board shall constitute a quorum, and a majority vote of those present and voting at any one meeting shall be necessary to transact business.

(g) In the absence of willful misconduct, the members of the board shall be immune, individually and jointly, from civil liability for any act or omission done or made in the performance of their duties while serving as members of the board.

(h) Members of the board shall serve without compensation and without reimbursement for expenses. Nothing contained in this section shall be construed to prevent any sponsoring

organization for compensating its representative on the board for salary, expenses, or other compensation considered as a condition for their employment.

(i) Every two years, the board shall elect a chair and other officers from among its members as the board deems necessary.

Section 3. §24C-1-2b. Underground Damage Prevention Fund.

(a) There is hereby created an Underground Damage Prevention Fund to be administered and used by the Underground Damage Facilities Prevention Board for the purpose of carrying out its duties under this article. All sources of funds collected by the board under this article, including, but not limited to, grants, assessments, and civil penalties collected pursuant to this article, shall be deposited into the fund. Any moneys remaining in the fund at the end of the fiscal year shall not revert to the General Fund, but shall remain in the fund for the exclusive use of the board. The expenditure of moneys in the fund shall be at the discretion of the board to carry out its duties under this article. Excess funds shall be used for purposes related to damage prevention, including, but not limited to, public awareness programs, training, and educational programs for excavators, operators, line locators, and persons to reduce the number and severity of violations of this article.

(b) The Public Service Commission or the board, or both, may apply for available grants, including those awarded by the United States Department of Transportation's Pipeline and Hazardous Materials and Safety Administration. The board shall comply with any restrictions placed on any grant received from a government agency. Grants may be used to fund the cost of services associated with this article or for the purposes stated in each grant.

(c) In the event that the annual cost of services associated with this article exceed the funds available in the fund, the annual operating costs shall be apportioned in a proportional manner and collected by the one-call system from the operators in an amount equal to the amount necessary to offset the cost of investigative and administrative services. Under no circumstances shall any operating costs or liabilities of the board be ultimately deducted or paid from Public Service Commission special revenue funds.

Section 4: Sample Violation Notification Letter and Citation Form



October 2, 2019

1516 Kanawha Ave.
Wheeling WV, 26003

Re: Excavating without a locate ticket

Dear John Smith:

This letter is to inform you that you have been found in violation of West Virginia Code 24C-1-11. This section of the West Virginia code covers the requirement that individuals or other entities utilize the free 811 service before excavating. All people digging for any reason must notify WV811 48 hours before commencing construction.

A complaint was received, with documentary evidence of the failure to create a locate ticket, that digging took place at 1516 Kanawha Avenue, Wheeling WV, 26003 on or about March 17, 2019. Since no locate ticket request was placed for this location, you have been found in violation.

Because this is your first offense, there is no fine but all subsequent violations within five years could result in fines. To comply with the citation enclosed in this letter, you must complete the required internet training found at www.wvdamagepreventionboard.com within 30 days of the postmark of this letter.

If you would like to contest this violation, you have 30 days from the postmark to provide a written response with documentary evidence explaining why this incident is not in violation of West Virginia Code 24C-1-11. Thank you,

Carrie Clendening
Executive Secretary,
West Virginia Underground Damage Prevention Board

