

25-9-1.

This chapter shall be known and may be cited as the 'Georgia Utility Facility Protection Act.'

25-9-2.

The purpose of this chapter is to protect the public from physical harm, prevent injury to persons and property, and prevent interruptions of utility service resulting from damage to utility facilities and sewer laterals caused by blasting or excavating operations by providing a method whereby the location of utility facilities and sewer laterals will be made known to persons planning to engage in blasting or excavating operations so that such persons may observe proper precautions with respect to such utility facilities and sewer laterals.

25-9-3.

As used in this chapter, the term:

(1) 'Abandoned utility facility' means a utility facility taken out of service by a facility owner or operator on or after January 1, 2001.

(2) 'Blasting' means any operation by which the level or grade of land is changed or by which earth, rock, buildings, structures, or other masses or materials are rended, torn, demolished, moved, or removed by the detonation of dynamite or any other explosive agent.

(3) 'Business days' means Monday through Friday, excluding the following holidays: New Year's Day, Birthday of Dr. Martin Luther King, Jr., Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the following Friday, Christmas Eve, and Christmas Day. Any such holiday that falls on a Saturday shall be observed on the preceding Friday. Any such holiday that falls on a Sunday shall be observed on the following Monday.

(4) 'Business hours' means the time from 7:00 A.M. to 4:30 P.M. local time on business days.

(5) 'Commission' means the Public Service Commission.

(6) 'Corporation' means any corporation; municipal corporation; county; authority; joint-stock company; partnership; association; business trust; cooperative; organized group of persons, whether incorporated or not; or receiver or receivers or trustee or trustees of any of the foregoing.

(7) 'Damage' means any impact or exposure that results in the need to repair a utility facility due to the weakening or the partial or complete destruction of the facility including, but not limited to, the protective coating, lateral support, cathodic protection, or the housing for the line, device, or facility.

(8) 'Design locate request' means a communication to the utilities protection center in which a request for locating existing utility facilities and sewer laterals for bidding, predesign, or advance planning purposes is made. A design locate request may not be used for excavation purposes.

(8.5) 'Designate' means to stake or mark, on the surface of the tract or parcel of land, the location of a utility facility or sewer lateral.

(9) 'Emergency' means a sudden or unforeseen occurrence involving a clear and imminent danger to life, health, or property; the interruption of utility services; or repairs to transportation facilities that require immediate action.

(10) 'Emergency notice' means a communication to the utilities protection center to alert the involved facility owners or operators of the need to excavate due to an emergency that requires immediate excavation.

(11) 'Excavating' means any operation by which the level or grade of land is changed or earth, rock, or other material below existing grade is moved and includes, without limitation, grading, trenching, digging, ditching, augering, scraping, directional boring, and pile driving. Such term, however, does not include routine road surface scraping maintenance. 'Excavating' shall not include pavement milling or pavement repair carried out by road maintenance employees or contractors, not to exceed the depth of the existing pavement or 12 inches, whichever is less, or other ~~mean~~ routine roadway maintenance activities ~~carried out by employees of the Georgia Department of Transportation acting within the scope of their employment,~~ provided that such those activities occur entirely within the right of way of a public road, street, or highway of the state; are carried out with reasonable care so as to protect any utility facilities and sewer laterals placed in the right of way by permit; are carried out within the limits of any original excavation on the traveled way, shoulders, or drainage ~~features~~ ditches of a public road, street, or highway, and do not exceed 18 inches in depth below the grade existing prior to such activities; and, if involving the replacement of existing structures, replace such structures in their previous locations and at their previous depth. Additionally, 'Excavating' shall not include normal farming activities.

(12) 'Excavator' means any person engaged in excavating or blasting as defined in this Code section.

(13) 'Extraordinary circumstances' means circumstances other than normal operating conditions which exist and make it impractical or impossible for a facility owner or operator to comply with the provisions of this chapter. Such extraordinary circumstances may include, but shall not be limited to, hurricanes, tornadoes, floods, ice and snow, and acts of God.

(14) 'Facility owner or operator' means any person or entity with the sole exception of

homeowners who owns, operates, or controls the operation of a utility facility as defined in this Code section, for the purpose of commercial enterprise.

(14.1) 'Horizontal Directional Drilling (HDD)' means a type of trenchless excavation that uses guidable boring equipment to excavate in an essentially horizontal plane without disturbing or with minimal disturbance to the ground surface.

(14.2) 'Large Projects' means an excavation that involves more work than can reasonably be completed within the requirements of 25-9-7(a) or as otherwise provided by the Public Service Commission upon recommendation of the advisory committee created pursuant to Code Section 25-9-13(f)(1). Large projects shall be conducted in accordance with section 25-9-7(h.1).

(14.5)'Local Governing Authority' means a county, municipality or local authority created by or pursuant to general, local or special act of the General Assembly, or by the constitution of the State of Georgia. The term also includes such bodies which are created or activated by an appropriate ordinance or resolution of the governing body of a county or municipality individually or jointly with other political subdivisions of this state.

(15) 'Locate request' means a communication between an excavator and the utilities protection center in which a request for locating utility facilities and sewer laterals is processed.

(15.5) 'Locator' means a person who is acting on behalf of facility owners and operators by designating the location of the utility facilities and sewer laterals of such owners and operators.

(16) 'Mechanized excavating equipment' means all equipment which is powered by any motor, engine, or hydraulic or pneumatic device and which is used for excavating.

(16.5) 'Minimally intrusive excavation methods' means methods of excavation that minimize the potential for damage to utility facilities and sewer laterals. Examples include, but are not limited to, air entrainment/vacuum extraction systems and water jet/vacuum excavation systems operated by qualified personnel and careful hand tool usage and other methods as determined by the Public Service Commission. This term does not include the use of trenchless excavation.

(16.8) 'Permanent Marker' means a visible indication of the approximate location of a utility facility or sewer lateral that can reasonably be expected to remain in position for the life of the facility. The term includes, but is not limited to, cleanouts, meter boxes, etching, cutting, or attaching ~~or placing~~ medallions or other industry accepted surface markers to curbing, pavement or other similar visible fixed surfaces. All permanent markers other than sewer cleanouts, water meters, or any other visible component a utility facility that establish the exact location of the facility, must be placed accurately in accordance with section 25-9-9 of this Chapter, and be located within the public right of way. Sewer cleanouts, water meters, or any other ~~marker~~ visible component of a utility

facility that establishes the exact location of the facility must be located within 10 feet of the public right of way to be considered a permanent marker.

(17) 'Person' means an individual, firm, joint venture, partnership, association, ~~municipality~~ local governing authority, state, or other governmental unit, authority, department, agency, or a corporation and shall include any trustee, receiver, assignee, employee, agent, or personal representative thereof.

(17.5) 'Positive Response Information System' means the automated information system operated and maintained by Utilities Protection Center, Inc. at their location that allows excavators, locators, facility owners, and other affected parties to determine locate ticket status.

(18) 'Service area' means a contiguous area or territory which encompasses the distribution system or network of utility facilities and sewer laterals by means of which a facility owner or operator provides utility service.

~~(19) 'Ticket Information Exchange System' means the automated information system to be installed and operated by the utilities protection center that will allow the excavator to determine locate ticket status from information provided by the facility owner or operator.~~ 'Sewer Lateral' is an individual customer service line which transports wastewater from a single (or multiple) building unit(s) to a utility owned sewer main. For the purposes of this Chapter only, a sewer lateral shall not be considered a utility facility.

(19.5) 'Traffic Control Devices' means all signs, sign structures, or signals and all associated infrastructure, on which the public relies for informational, regulatory, or warning messages concerning the public rights of way.

(19.6) 'Traffic Management Systems' means a network of Traffic Control Devices, monitoring sensors, and personnel, with all associated communications and power services—including all system Control and Management Centers.

(19.8) 'Trenchless excavation' means a method of excavation that uses boring equipment to excavate without disturbing or with minimal disturbance to the ground surface, and include 'Horizontal Directional Drilling'.

(20) 'Tolerance zone' means the width of the utility facility or sewer lateral plus 24 inches on either side of the outside edge of the utility facility on a horizontal plane.

(20.5) 'Unlocateable Facilities' means an underground facility that cannot be marked with reasonable accuracy using generally accepted techniques or equipment commonly used to designate utility facilities and sewer laterals. This term includes, but is not limited to, nonconductive utility facilities and sewer laterals and nonmetallic underground facilities that have no trace wires or records that indicate a specific location.

(21) 'Utilities Protection Center' or 'Center UPC' means the corporation formed by facility owners and operators to provide a joint ~~telephone number~~ notification service for the purpose of receiving advance notification from persons planning to blast or excavate and distributing such notifications to its affected facility owner or operator members.

(22) 'Utility facility' means an underground or submerged conductor, pipe, or structure used in providing electric or communications service, or carrying, providing, or gathering gas, oil or oil products, sewage, waste water, storm drainage, water or other liquids, and appurtenances thereto. All utility facilities shall be considered to extend up to the connection to the customer's facilities. 'Utility facility' does not include traffic control devices, traffic management systems, or sewer laterals.

25-9-4.

(a) Any person may submit a design locate request to the UPC. Such design locate request shall:

(1) Describe the tract or parcel of land for which the design locate request has been submitted with sufficient particularity, as defined by policies developed and promulgated by the UPC, to enable the facility owner or operator to ascertain the precise tract or parcel of land involved; and

(2) State the name, address, and telephone number of the person who has submitted the design locate request, as well as the name, address, and telephone number of any other person authorized to review any records subject to inspection as provided in paragraph (3) of subsection (b) of this Code section.

(b) Within ten working days after a design locate request has been submitted to the UPC for a proposed project, the facility owner or operator shall respond by one of the following methods:

(1) Designate or cause to be designated by a locator in accordance with Code Section 25-9-9 the location of all utility facilities and sewer laterals within the area of the proposed excavation;

(2) Provide to the person submitting the design locate request the best available description of all utility facilities and sewer laterals in the area of proposed excavation, which might include drawings of utility facilities and sewer laterals already built in the area, or other facility records that are maintained by the facility owner or operator; or

(3) Allow the person submitting the design locate request or any other authorized person to inspect or copy the drawings or other records for all utility facilities and sewer laterals within the proposed area of excavation.

(c) Upon responding using any of the methods provided in subsection (b) of this Code section, the facility owner or operator shall provide the response to the UPC in accordance with UPC procedures.

25-9-5.

(a) All facility owners or operators operating or maintaining utility facilities within the state shall participate as members in and cooperate with the ~~utilities protection center~~ UPC. No duplicative center shall be established. The activities of the ~~Center~~ UPC shall be funded by all utilities. Notwithstanding the above, persons who own water and sewer facilities until those facilities are accepted by a local governing authority or other entity are not required to participate as members and are not considered utility facility owners or operators. All such owners shall install and maintain permanent markers, as defined in Section 25-9-3, identifying all water and sewer facilities at the time of the facility installation. All privately owned water and sewer operators are considered utility facility owners and shall be members of the UPC.

(b) The ~~utilities protection center~~ UPC shall maintain a list of the name, address, and telephone number of the office, department, or other source from or through which information respecting the location of utility facilities of its participating facility owners or operators may be obtained during business hours on business days.

25-9-6.

(a) No person shall commence, perform, or engage in blasting or in excavating with mechanized excavating equipment on any tract or parcel of land in any county in this state unless and until the person planning the blasting or excavating has given 48 hours notice by submitting a locate request to the ~~utilities protection center~~ UPC, beginning the next business day after such notice is provided, excluding hours during days other than business days. Any person performing excavation is responsible for being aware of all information timely entered into PRIS prior to the commencement of excavation. If, prior to the expiration of the 48 hour waiting period, all identified utility facility owners or operators have responded to the locate request, and if all have indicated that their facilities are either not in conflict or that their facilities have been marked, then the person planning to perform excavation or blasting shall be authorized to commence work, subject to the other requirements of this section, without waiting the full 48 hours. The notice described above shall not be required for excavating where minimally intrusive excavation methods are used exclusively. Any locate request received by the utilities protection center after business hours shall be deemed to have been received by the utilities protection center the next business day. Such locate request shall:

(1) Describe the tract or parcel of land upon which the blasting or excavation is to take place with sufficient particularity, as defined by policies developed and promulgated by the utilities protection center, to enable the facility owner or operator to ascertain the precise tract or parcel of land involved;

(2) State the name, address, and telephone number of the person who will engage in the blasting or excavating;

(3) Describe the type of blasting or excavating to be engaged in by the person; and

(4) Designate the date upon which the blasting or excavating will commence.

(b) In the event the location upon which the blasting or excavating is to take place cannot be described with sufficient particularity to enable the facility owner or operator to ascertain the precise tract or parcel involved, the person proposing the blasting or excavating shall mark the route or boundary of the site of the proposed blasting or excavating by means of white paint, white stakes, or white flags if practical, or schedule an on-site meeting with the locator or facility owner and inform the utility protection center, within a reasonable time, of the results of such meeting.

(c) Except as otherwise provided in this subsection, notice given pursuant to subsection (a) of this Code section shall expire 21 calendar days following the date of such notice, and no blasting or excavating undertaken pursuant to this notice shall continue after such time has expired. In the event that the blasting or excavating which is the subject of the notice given pursuant to subsection (a) of this Code section will not be completed within 21 calendar days following the date of such notice, an additional notice must be given in accordance with subsection (a) of this Code section for the locate request to remain valid.

(c.1) For emergencies, notice shall expire at 7:00 A.M. three business days after the notification is made to the UPC."

(d) Except for those persons submitting design locate requests, no person, including facility owners or operators, shall request marking of a site through the utilities protection center unless excavating is scheduled to commence. In addition, no person shall make repeated requests for re-marking, unless the repeated request is required for excavating to continue or due to circumstances not reasonably within the control of such person. Any person who willfully fails to comply with this subsection shall be ~~strictly~~ liable to the facility owner or operator for \$100 or for the costs filed and approved by an elected authority, whichever is greater, for each repeated request for marking. For purposes of this section, an elected authority is the PSC, local governments or any other elected person or body with rate jurisdiction over facility owners.

(e) If, subsequent to giving the notice to the utilities protection center required by subsection (a) of this Code section, a person planning excavating determines that such work will require blasting, then such person shall promptly so notify the utilities protection center and shall refrain from any blasting until the facility owner or operator responds within 24 hours, excluding hours during days other than business days, following receipt by the utilities protection center of such notice.

(f) When a locate request is made in accordance with subsection (a) of this Code section,

excavators other than the person planning the blasting or excavating may conduct such activity, provided that the person planning the blasting or excavating shall remain responsible for ensuring that any stakes or other markings placed in accordance with this chapter remain in place and reasonably visible until such blasting or excavating is completed; and provided, further, that such blasting or excavating is:

(1) Performed on the tract or parcel of land identified in the locate request;

(2) Performed by a person authorized by and having a contractual relationship with the person planning the blasting or excavating;

(3) The type of blasting or excavating described in the locate request; and

(4) Carried out in accordance with all other requirements of this chapter.

(g) Facility owner or operators may bill an excavator their costs for any requests for re-marking other than for re-marks with no more than five individual addresses on a single locate request. Such costs shall be documented actual costs, and shall not exceed \$100 or documented actual cost, whichever is greater, per re-mark request.

25-9-7.

(a) Within 48 hours beginning the next business day after the business day following receipt by the utilities protection center of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days, each facility owner or operator shall determine whether or not utility facilities are located on the tract or parcel of land upon which the excavating or blasting is to occur. If utility facilities are determined to be present, the facility owner or operator shall designate, through stakes, flags, permanent markers or other marks on the surface of the tract or parcel of land, the location of utility facilities. This subsection shall not apply to large projects. Designating requirements for large projects shall be in accordance with section 25-9-7(h.1). ~~In the event of extraordinary circumstances, the facility owner or operator shall notify the utilities protection center as provided in subsection (c) of this Code section.~~

(1) Designation of the location of utility facilities through staking or marking shall be in accordance with the American Public Works Association (APWA) color code in place at the time the location of the utility facility is designated. Additional marking requirements, if any, beyond color code shall be recommended by the Advisory Committee and prescribed by rules of the Public Service Commission.

(2) A facility owner or operator is not required to mark its own facilities within 48 hours if the facility owner or operator or its agents are the only parties performing the excavation, however such facilities shall be designated prior to the actual start of excavation.

(b) Within 48 hours beginning the next business day after the business day following receipt by the utilities protection center of the locate request filed in accordance with

Code Section 25-9-6, excluding hours during days other than business days, each sewer facility owner or operator shall determine whether or not sewer laterals are located or likely to be located on the tract or parcel of land upon which the excavating or blasting is to occur. If sewer laterals are determined to be present, or likely to be present, the sewer facility owner or operator shall assist in designating sewer laterals up to the edge of the public right of way. Such assistance shall not constitute ownership or operation of the sewer lateral by the sewer facility owner or operator. Good faith compliance with the provisions of this section in response to a locate request shall constitute full compliance with the law and no person shall be found liable to any party for damages or injuries as a result of performing in compliance with the requirements of this section.

(1) To assist in designating sewer laterals the sewer facility owner or operator shall provide its best available information regarding the location of the laterals to the excavator. This information shall be conveyed to the excavator in a manner including but not limited to any one of the following methods:

(A) Marking the location of sewer laterals in accordance with subsection (a) of this section; provided that;

(i) Any sewer lateral designated using the best available information shall constitute a good faith attempt and shall be deemed to be in compliance with this section, provided that such mark represents only the best available information of the utility owner and may not be accurate;

(ii) If a sewer lateral is unlocatable a triangular green mark shall be placed on the sewer main pointing at the address in question to indicate the presence of an unlocatable sewer lateral;

(B) Providing electronic copies of or ~~delivering the records through overnight mail or to an agreed upon location making the records available for pick-up by the contractor at the sewer facility owner or operator's normal place of business~~ within 48 hours beginning the next business day after the business day following receipt by the Utilities Protection Center of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days;

(C) Arranging to meet the excavator on sight to provide the best available information about the location of the sewer laterals, or

(D) Any other reasonable means of conveyance approved by the Advisory Committee provided that such means shall be equivalent to or exceed the provisions of (A), (B), or (C) above.

(c) Each facility owner or operator, either upon determining that no utility facility, or sewer lateral is present on the tract or parcel of land or upon completion of the designation of the location of any utility facilities or sewer laterals on the tract or parcel of land as required by subsections (a) or (b) of this Code section, shall provide this information to the utilities protection center in accordance with procedures developed by the utilities protection center, and which may include the use of the Positive Response Information System ~~Ticket Information Exchange System~~. In no event shall such notice be provided later than midnight of the second business day following receipt by the utilities protection center of actual notice filed in accordance with Code Section 25-9-6.

(d) In the event the facility owner or operator is unable to designate the location of the

utility facilities or sewer laterals due to extraordinary circumstances, the facility owner or operator shall notify the utilities protection center and provide an estimated completion date in accordance with procedures developed by the utilities protection center, which may include the use of the Positive Response Information System Ticket Information Exchange System.

(e) If, at the end of the time period specified in subsection (a) of this Code section, any facility owner or operator has not complied with the requirements of subsections (a), (b) or (c) of this Code section, the utilities protection center shall issue a second request to each such facility owner or operator. If the facility owner or operator does not respond to this additional request by 12:00 Noon of that business day, either by notifying the utilities protection center in accordance with procedures developed by the utilities protection center that no utility facilities or sewer laterals are present on the tract or parcel of land, or by designating the location of such utility facilities or sewer laterals in accordance with the requirements of subsections (a), or (b), then the person providing notice pursuant to Code Section 25-9-6 may proceed with the excavating or blasting, provided there is no visible and obvious evidence of the presence of an unmarked utility facility, or sewer lateral on the tract or parcel of land. Such person shall not be subject to any liability resulting from damage to the utility facility, or sewer lateral as a result of the blasting or excavating, provided such person complies with the requirements of Code Section 25-9-8.

(e.1) If visible and obvious evidence of the presence of an unmarked utility facility or sewer lateral does exist and the facility owner or operator either refuses to comply with 25-9-7 (a),(b),(c), or (d) as appropriate or is not a member of the UPC, then the excavator shall attempt to designate such facilities prior to excavating. The facility owner or operator shall be liable for the actual costs associated with the excavator designating such utility facilities and sewer laterals. Such costs shall not exceed \$100 or documented actual costs, whichever is greater, per locate request.

(f) All utility facilities and sewer laterals shall be installed in a manner which will make them locatable using a generally accepted electronic locating method by facility owners or operators. In the event that an unlocatable facility becomes exposed when the facility owner is present on or after January 1, 2006, such facility shall be made locatable through the use of a permanent marker or an updating of permanent records.

(g) Facility owners or operators shall either maintain records in a data base information concerning the location and other characteristics of abandoned utility facilities, maintain such abandoned utility facilities in a locatable manner, or remove such abandoned utility facilities. Facility owners or operators shall provide information on abandoned utility facilities, when possible, in response to a locate request or design locate request. When the presence of an abandoned facility within an excavation site is known, the facility owner or operator should attempt to locate and mark the abandoned facility or provide information to the excavator regarding such facilities. When located or exposed, all abandoned utility facilities and sewer laterals shall be treated as live utility facilities and sewer laterals.

(h) Other provisions of the law notwithstanding, a facility owner or operator may use a locator to designate any or all utility facilities and sewer laterals. The use of a locator shall not relieve the utility facility owner or operator of any responsibility under this law. However, by contract a utility facility owner or operator may be indemnified by a locator for any failure on the part of the locator to comply with the law.

(h.1) By Jan 1, 2006, the Advisory Committee shall submit to the PSC for adoption rules and processes specific to the locating of large projects. These rules shall include but are not limited to the establishment of detailed processes. Such rules may also include changes in the time allowed for a facility owner or operator to comply with the provisions of this law and to the length of time for which designations are valid. Until such laws rules are adopted by the Commission, no large projects shall be recognized under this law. The Commission shall promulgate rules addressing this subsection no later than June 1, 2006.

(i) Within 48 hours beginning the next business day after the business day following receipt by the utilities protection center of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days, each facility owner or operator shall determine whether or not unlocatable facilities other than sewer laterals are present. In the event that such facilities are determined to be present the utility shall exercise reasonable care in locating such facilities. The exercise of reasonable care shall require, at a minimum, the use of the best available information to designate the facilities, and notification to the UPC of such attempted location. Placing markers or otherwise leaving evidence of locations of facilities is deemed to be an acceptable form of notification to the excavator/locator.

25-9-8.

(a) Persons engaged in blasting or in excavating with mechanized excavating equipment shall not strike, damage, injure, or loosen any utility facility or sewer lateral which has been staked or marked in accordance with this chapter.

(b) When excavating or blasting is to take place within the tolerance zone, the excavator shall exercise such reasonable care as may be necessary for the protection of the utility facility or sewer laterals, including permanent markers and paint placed to designate facilities. This protection shall include, but may not be limited to, hand digging, pot holing, soft digging, vacuum excavation methods, pneumatic hand tools, other mechanical methods with the approval of the facility owner or operator, or other generally accepted methods. For parallel type excavations, the existing facility shall be exposed at intervals as often as necessary to avoid damages.

~~(c) When conducting trenchless excavation the excavator must take additional care to attempt to prevent damage to utility facilities and sewer laterals. Guidance related to additional care shall be provided by the Advisory Committee by January 1, 2006. At a minimum that guidance shall incorporate the recommendations of the HDD consortium described in the document "Horizontal Directional Drilling Good Practices Guidelines" dated May, 2001. When excavating with horizontal directional drilling (HDD)~~

equipment in an area where sewer laterals and utility facilities are known to be present and have been marked, the excavator must expose the lateral and all utilities which cross the bore path through the use of minimally intrusive excavation methods. If the lateral location has been determined to be unknown as represented by a green triangular mark, or other information provided by the local governing authority, the excavator must use additional care when excavating. The Advisory Committee shall establish a policy on additional care to be taken by HDD operators by January 1, 2006. In the event that the lateral location cannot be determined, the horizontal directional drilling shall be of sufficient depth to be below the invert of the sewer main, which will ensure that it will also be below the sewer laterals.

(d) Any person engaged in blasting or in excavating with mechanized excavating equipment who strikes, damages, injures, or loosens any utility facility or sewer lateral, regardless of whether the utility facility or sewer lateral is marked, shall immediately cease such blasting or excavating and notify the utilities protection center and the appropriate facility owner or operator, if known. Upon receiving notice from the excavator or the utilities protection center, the facility owner or operator shall send personnel to the location as soon as possible to effect temporary or permanent repair of the damages. Until such time as the damage has been repaired, no person shall engage in excavating or blasting activities that may cause further damage to the utility facility or sewer lateral except as provided in Code Section 25-9-12.

25-9-9.

(a) For the purposes of this chapter, ~~information concerning~~ the location of utility facilities which is provided by a facility owner or operator, in accordance with section 25-9-7(a), to any person must be accurate to within 24 inches measured horizontally from the outer edge of either side of such utility facilities and sewer laterals. If any utility facility becomes damaged by an excavator due to the furnishing of inaccurate information as to its location by the facility owner or operator, such excavator shall not be subject to any liability resulting from damage to the utility facility as a result of the blasting or excavating provided such person complies with the requirements of Code Section 25-9-8 and there is no visible and obvious evidence to the excavator of the presence of a mismarked utility facility.

(b) Upon documented evidence that the person seeking information as to the location of utility facilities has incurred losses or expenses due to inaccurate information, lack of information, or unreasonable delays in supplying information by the facility owners or operators, the facility owners or operators shall be liable to that person for any such losses or expenses.

25-9-10.

This chapter does not affect and is not intended to affect any right, title, power, or interest which any facility owner or operator may have with relation to any utility facility or to any easement, right of way, license, permit, or other interest in or with respect to the land on which the utility facility is located.

25-9-11.

This chapter does not affect and is not intended to affect any rights, powers, interest, or liability of the State or the Department of Transportation with respect to the state highway system, the county road system, or the municipal street system, or of a county with respect to the county road system or of a municipality with respect to the city street system, with relation to any utility facility which is or may be installed within the limits of any public road or street right of way, whether the installation is by written or verbal permit, easement, or any form of agreement whatsoever.

25-9-12.

The notice requirements provided by Code Section 25-9-6 shall not be required of persons performing emergency excavations or excavation in extraordinary circumstances; provided, however, any person who engages in an emergency excavation or excavation in extraordinary circumstances shall take all reasonable precautions to avoid or minimize damage to any existing utility facilities and sewer laterals; provided, further, any person who engages in an emergency excavation or excavation in extraordinary circumstances shall give notice of the emergency excavation as soon as practical to the utilities protection center. In giving such notice, such person must specifically identify the dangerous condition involved. If it is later determined ~~by the~~ through the enforcement process identified in Section 25-9-13(g) that the excavation did not qualify as an emergency excavation, all liabilities and penalties will accrue as if no notice had been given.

25-9-13.

(a) Any person who violates the requirements of Code Section 25-9-6, and whose subsequent excavating or blasting damages utility facilities or sewer laterals shall be strictly liable for:

(1) ~~Any cost~~ All costs incurred by the facility owner or operator in repairing or replacing its damaged facilities; and

(2) Any injury or damage to persons or property resulting from damaging the utility facilities and sewer laterals

(a.1) Local governing authorities are authorized to require, by local ordinance, any bonds on persons performing excavation in their jurisdiction as they may determine to assure compliance with sub section (a) above.

(b) Any such person shall also indemnify the affected facility owner or operator against all claims or costs incurred, if any, for personal injury, property damage, or service interruptions resulting from damaging the utility facilities and sewer laterals. Such obligation to indemnify shall not apply to any county, city, town, **local authority**, or state agency to the extent permitted by law. In any civil action by a facility owner to recover the costs of repairing or replacing facilities damaged through violation of Code Section 25-9-6 or 25-9-8, those costs shall be calculated utilizing generally accepted accounting principles (GAAP) or other accounting methods approved by the Commission.

(c) In addition to the other provisions of this Code section, a professional licensing board shall be authorized to suspend or revoke any professional or occupational license, certificate, or registration issued to a person pursuant to Title 43 whenever such person violates the requirements of Code Section 25-9-6 or 25-9-8.

(d) Subsections (a), (b), and (c) of this Code section shall not apply to any person who shall commence, perform, or engage in blasting or in excavating with mechanized equipment on any tract or parcel of land in any county in this state if the facility owner or operator to which notice was given respecting such blasting or excavating with mechanized equipment as prescribed in subsection (a) of Code Section 25-9-6 has failed to comply with Code Section 25-9-7 or has failed to become a member of the utilities protection center as required by Code Section 25-9-5.

(e) The commission shall enforce the provisions of this chapter. The commission may promulgate any rules and regulations necessary to implement the Commission's authority to enforce this chapter.

(f)(1) The commission shall create an advisory committee. The advisory committee shall be comprised of:

- (a) One member appointed by the Georgia Department of Transportation;
- (b) One member appointed by the ~~Governors Office of Consumer Affairs~~ Georgia Water Pollution Control Association;
- (c) One member appointed by the Utilities Protection Center;
- (d) One member appointed by the Association County Commissioners of Georgia;
- (e) One member appointed by the Georgia Municipal Association;
- (f) ~~Two representatives of facility owners and operators~~ One representative of the non-municipal electric industry appointed by the Georgia Utilities Coordinating Council;
- (g) ~~Two~~ Three representatives of excavators appointed by the Georgia Utilities Coordinating Council;
- (h) One representative of locators appointed by the Georgia Utilities Coordinating Council; ~~and~~
- (i) One representative of the non-municipal Telecommunications Industry appointed by the Georgia Utilities Coordinating Council;
- (j) One representative of the non-municipal natural gas industry appointed by the Georgia Utilities Coordinating Council;
- (k) The Commission chairperson or such chairperson's designee.

The Commission chairperson or designee shall serve as chairperson of the Advisory Committee and shall cast a vote only in the case of a tie. Persons appointed to the Advisory Committee shall have expert knowledge of this Chapter, and specific operations expertise with the subject matter encompassed by the provisions of this chapter. The Advisory shall evaluate the qualifications of each appointee to determine if he or she possesses the requisite expertise. All entities charged with making appointments shall make such appointments within 30 days from the effective date of this section. Members of the existing Advisory Committee shall make this evaluation until the new composition of the Advisory Committee has been established. The new Advisory Committee shall be established within 60 days of the effective date of this section.

(2) The advisory committee shall assist the commission in the enforcement of this chapter, and shall perform duties as directed by this chapter and those to be assigned by the commission including, but not limited to, the review of reported violations of this chapter, and the preparation of recommendations to the commission as to the appropriate penalties to impose on persons violating the provisions of this chapter.

(3) The members of the advisory committee 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 such advisory committee, but only in the absence of willful misconduct.

~~(g) The commission may, by judgment entered after a hearing on notice duly served on any person not less than 30 days before the date of the hearing, impose a civil penalty not exceeding \$10,000.00 for each violation, if it is proved that the person violated any of the provisions of this chapter, as a result of a failure to exercise reasonable care. Any proceeding or civil penalty undertaken pursuant to this Code section shall not prevent nor preempt the right of any party to obtain civil damages for personal injury or property damage in private causes of action. Except as otherwise provided by law, this subsection shall not authorize the commission to impose civil penalties on any county, city, town, local authority, or state agency. The commission shall inform the counties, cities, towns, local authorities, or state agencies of reports of alleged violations involving the county, city, town, local authority, or state agency and, at the request of the county, city, town, local authority, or state agency, suggest corrective action. Commission enforcement of this Chapter shall follow the procedures described below. The Commission is not authorized to impose civil penalties on any local governing authority except under the circumstances shown below, however- Nothing in this section shall limit the authority of the Commission delegated from the Federal government and authorized in other State law over all natural gas and hazardous waste pipelines, which include municipal gas operators.~~

(1) If Commission investigators find that a probable violation has occurred, they may recommend training in lieu of penalties to any person for any violation. The Commission shall provide suggestions for corrective action to any person requesting such assistance. Commission investigators shall make recommended findings or offer of settlement to the respondent.

~~(2) For local governing authorities, in the event that the investigators determine that the severity of the violation warrants civil penalties or that the local governing authority has demonstrated a willful pattern of non-compliance, the investigators shall be authorized to recommend a civil penalty not to exceed the limitations set forth below.~~

(3) Any respondent may accept or disagree with the recommended settlements of the investigators. If the respondent disagrees with the recommended settlement, they may dispute the settlement recommendation to the advisory committee. The advisory committee shall then render a decision either supporting the recommendation, rejecting the recommendation or substituting its own recommendation. In its deliberations the advisory committee shall consider the gravity of the violation(s); the degree of the respondent's culpability; the respondent's history of prior offenses; and such other mitigating factors as may be appropriate. If the advisory

committee determines that a respondent has made a good faith effort to comply with the law, the committee shall not recommend civil penalties against the respondent.

(43) If any respondent disagrees with the decision of the advisory committee, the investigators shall have the authority to seek enforcement, including civil penalties, from the Commission, upon the recommendation of a hearing officer or administrative law judge. The acceptance of any of the recommendations above will stop further action by the investigators in that case.

(54) The commission may, by judgment entered after a hearing on notice duly served on any person not less than 30 days before the date of the hearing, impose a civil penalty not exceeding \$10,000.00 for each violation, if it is proved that the person violated any of the provisions of this chapter, as a result of a failure to exercise reasonable care. Any proceeding or civil penalty undertaken pursuant to this Code section shall not prevent nor preempt the right of any party to obtain civil damages for personal injury or property damage in private causes of action except as otherwise provided in this Chapter.

~~(6) Notwithstanding the above, by January 1, 2006 the advisory committee shall recommend to the Commission for adoption a tiered penalty structure for local governing authorities that shall set the maximum penalties at a level to induce compliance with the law but shall not exceed \$5000 per violation for the highest tier. Other, lower tiers shall be established and take into account the size, annual budget, gross receipts, number of utility connections, and types of utilities in the ground of the local governing authority.~~

~~(7) The fine provided for in this subsection shall not be imposed on a person engaged in farming activities on land such person owns or leases.~~

(h) All civil penalties ordered by the Commission and collected pursuant to this Code section shall be deposited in the general fund of the state treasury.