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Notice of New Regulation

Excavation & Trench Safety Regulation

520 CMR 14.00

- This new PUBLIC SAFETY regulation is required by statute and is designed to prevent the general public from falling into an unattended trench and suffering an injury or fatality. This regulation be enforced starting 3/1/09.
- Under the new regulation, a **trench** is defined as a subsurface excavation greater than 3' in depth, and is 15 feet or less between soil walls as measured from the bottom.
- All regulated trenches must be **attended, covered, barricaded, or backfilled**. Covers must be road plates at least ¾" thick or equivalent, barricades must be fences at least 6' high with no openings greater than 4" between vertical supports and all horizontal supports required to be located on the trench-side of the fencing.
- This applies to all construction-related trenches on public ways, public property, or private property.
- To ensure that all excavators are aware of and follow these new public safety regulations, a **permit** will be required prior to excavation of all regulated trenches.
- **All excavators** must obtain a trench permit for each trench site. The new trench permit will require information such as the name of excavator, the location of trench, a certificate of insurance, and the Dig Safe number.
- Under the regulation, municipalities must designate a **permitting authority** to issue the required permits for trenches on public ways or private property within the municipality. For state property, the relevant state authority will issue the permits.
- Municipalities may collect a reasonable **fee** to cover administrative costs of issuing permits.
- Permitting authorities are not required to conduct **inspections** of trenches for which they have issued permits. However, a permitting authority notified of a potential violation is authorized to take action, including an immediate shutdown, if violations of the new regulation are identified. Excavators may also be subject to administrative fines issued by the Department of Public Safety for violations.
- Municipal or state departments conducting excavations, such as a municipal water department or state highway authority, will be required to obtain a new trench permit.
- This new regulation in no way modifies or supersedes existing trench **worker safety** regulations. Workers in trenches must comply with the existing OSHA Excavation Standard, 29 CFR 1926, Subpart P. This new public safety regulation is entirely separate from and has no relationship to the existing trench worker safety standard.
- This is only a summary of the regulation. Please read the full regulation and obtain further information at www.mass.gov/dps, click on "trenches" from the left-side menu.

520 CMR 14.00: EXCAVATION AND TRENCH SAFETY

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Section 14.01 Authority, Purpose, and Scope

(1) Purpose and Scope.

(a) 520 CMR 14.00 is promulgated by the Department of Public Safety in conjunction with the Division of Occupational Safety pursuant to authority granted by M.G.L. c. 82A § 1.

(b) The purpose of 520 CMR 14.00 is to establish reasonable standards to protect the safety of the citizens of the Commonwealth from the hazards inherent in trenches and to provide for penalties for individuals who violate any provision of this regulation.

(2) Applicability Provision.

(a) 520 CMR 14.00 shall apply to any excavator.

(b) This regulation shall not be construed or enforced in a manner that directly, substantially or specifically regulates the occupation, safety or health of any employee engaged in employment covered by the Federal Occupational Safety and Health Act.

(c) This regulation shall be read in conjunction with and shall not supersede, be construed or be enforced in a manner that contradicts 780 CMR, the Massachusetts State Building Code.

(3) Effective Date. The enforcement of 520 CMR 14.00 shall begin on January 1, 2009 in order to provide adequate time for excavators and permitting authorities to train their employees and implement the provisions contained within these regulations.

Section 14.02 Definitions

Competent Person- A person or persons who is capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to people, and who has authorization to take prompt corrective measures to eliminate them. A competent person must be able to demonstrate that he or she has been trained in and is knowledgeable about: soil analysis, the use of protections for the General Public and the requirements of this regulation.

Emergency- An unforeseen condition in which the safety of the public is in imminent danger because of a threat to life or health or where immediate correction is required to maintain or restore essential public utility service.

Excavator – Any entity including, but not limited to, a person, partnership, joint venture, trust, corporation, association, public utility, company or state or local government body or public agency which performs excavation operations including the excavation of trenches.

General Public –All natural persons not engaged in the creation of a trench.

Permit Holder –The excavator who is responsible for acquiring a permit from the Permitting Authority.

Permitting Authority – A city, town, or public agency required to administer the provisions of 520 C.M.R. 14.03.

Public Agency— A department, agency, board, commission, authority, or other instrumentality of the Commonwealth or political subdivision of the Commonwealth or two or more subdivisions thereof.

Serious Injury - A personal injury that results in death, dismemberment, significant disfigurement, permanent loss of the use of a body organ, member, function, or system, a compound fracture, or other significant injury that requires immediate admission and overnight hospitalization and observation by a licensed physician.

Trench – An excavation which is narrow in relation to its length, made below the surface ground in excess of 3 feet below grade and the depth of which is, in general, greater than the width, but the width of the trench, as measured at the bottom, is no greater than 15 feet.

Unattended Trench – A trench where neither the permit holder, excavator, nor any of the people who work in or at the trench are present.

Section 14.03 Permitting Requirements

(1) No person shall, except in an emergency, make a trench excavation, in any public way, public property, or privately owned land until a permit is obtained from the appropriately designated permitting authority.

(2) Issuance of Permit.

(a) The permit holder shall be responsible for obtaining the appropriate permit for the excavation of trenches for each project from the appropriate permitting authority.

(b) Each city, town or regionalized entity shall designate one board or officer to issue permits for the excavation of trenches on privately owned land or land owned by a city or town. Cities or towns that regionalize or share permitting and inspection functions with other cities or towns may utilize these regionalized entities for the permitting of trenches.

(c) Any individual or entity creating a trench on property that is owned or controlled by a public agency or that a public agency otherwise has a property interest in, including but not limited to an easement, shall obtain a permit from the public agency with care and control of the property unless the permitting authority is otherwise designated through a written agreement. The public agency issuing the permit shall electronically notify the Department of Public Safety of the permit's issuance and shall provide the following information:

i. The location of the excavation indicated on the permit;

- ii. The anticipated date to begin the trench operation;
- iii. The anticipated date to conclude the trench operation;
- iv. The name of the permit holder; and
- v. The name of the competent person(s).

(d) When issuing a permit under this section, the permitting authority shall attach a summary of OSHA Regulation 1926 Subpart P-Excavations and a summary of any regulation promulgated by the Department of Public Safety in conjunction with the Division of Occupational Safety in accordance with M.G.L. c. 82A.

(3) Permit Requirements. In order to obtain a permit, the following information must be submitted to the permitting authority:

- (a) Completed application;
- (b) Certificate of insurance;
- (c) Required fee in accordance with 520 CMR 14.03 (6) where applicable.

(4) Contents of Permit Applications. All permit applications must contain the following information:

- (a) Digsafe number (see sample permit);
- (b) Name and contact information of permit holder;
- (c) Name and contact information of the excavator;
- (d) Name of the competent person(s)
- (e) Name of person(s) performing the excavation of the trench;
- (f) Massachusetts Hoisting License number, license grade and expiration date of the person(s) performing the excavation of the trench;
- (g) Permit expiration date (if applicable);
- (h) Specific location of the trench;
- (i) Name and contact information of insurer;
- (j) All permit applications shall also include the following statements pursuant to M.G.L. c.82A, §3 (3) and (5) (i), (ii):

1. "Persons engaging in any trenching operation shall familiarize themselves with the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 *et. seq.*, entitled Subpart P Excavations."

2. "By applying for, accepting and signing this permit, the applicant attests to the following: (i) that he has read and understood the regulations promulgated by the Department of Public Safety with regard to trench safety; (ii) that he has read and understood the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 *et. seq.*, entitled Subpart P "Excavations".

(5) Posting. All Permits issued pursuant to this regulation shall be posted in plain view on the site of the trench. All permits shall be made available to the permitting authority, any investigator from the Division of Occupational Safety, any inspector of the Department of Public Safety, or any other lawfully authorized authority.

(6) Permit Fees. In accordance with Chapter 82A, § 2, the local permitting authority may charge a reasonable fee to cover the administrative costs incurred by the authority in connection with the review and processing of permits.

Section 14.04 Protections for the General Public

- (1) Generally. Wherever an unattended trench exists, the operation shall be secured in a safe manner and suitable protection for the general public shall be provided. The permit holder shall secure the unattended trench to prevent unauthorized entry when work is not in progress.
- (2) Trenches on public ways. Access to unattended trenches opened during construction on a public way shall be restricted by covers or barriers.
 - (a) Where covers are used they shall be comprised of steel metal plates no less than $\frac{3}{4}$ inches thick, or equivalent. Covers shall be placed over the trench. Such covers shall be level and physically secure to prevent the creation of a hazard by inadvertent movement.
 - (b) Where barriers are used they shall comply with the following provisions:
 1. A continuous barrier not less than six feet in height shall surround the unattended trench.
 2. All barriers shall be of adequate strength and shall be supported in a manner that will allow them to be seen by the motorist and provide a stable support not easily blown over by the wind or traffic.
 3. Trench barriers adjacent to high speed traffic may include traffic control barrels ballasted by sandbags or temporary pre-cast concrete barriers as components.
 4. Trench barriers comprised of multiple sections shall allow not more than four inches between each section. Adjacent sections must be securely fastened to each other.
 5. Any openings between the ground and barrier shall not exceed 4 inches.
 6. Barriers shall be at a sufficient distance from the trench to be unaffected by changing conditions of the trench site.
- (3) Trenches at fixed work sites other than on a public way. Access to unattended trenches opened during construction at a fixed work site on public or private property shall be restricted by covers or portable barriers.
 - (a) Where covers are used they shall be comprised of steel metal plates no less than $\frac{3}{4}$ inches thick or equivalent. Covers shall be placed over trenches. Such covers shall be level and physically secure to prevent the creation of a hazard by inadvertent movement.
 - (b) Where portable protective barriers are used, barriers of a height not less than 6 feet shall be constructed surrounding the entire perimeter of the trench.
 1. Barriers comprised of multiple sections may allow not more than four inches between each section. Adjacent sections must be securely fastened to each other.
 2. Openings between the ground and fence shall not exceed 4 inches.
 3. Fence-type barriers shall be secured by vertical support members not more than ten feet apart. Fencing spaces shall not exceed 4 inches when measured as mesh size or between slats.
 4. Solid barriers shall not contain holes or indentations larger than 4 inches.
 5. All horizontal support members shall be located on the trench side of the barrier.
 6. The wall of a dwelling or other permanent structure of a height of not less than six feet may serve as part of the barrier, provided it complies with all of the provisions of this section.
14. Gates and other means of egress must:
 - (i) Comply with the size and strength provisions of this section;
 - (ii) Be securely fastened to adjacent barrier components;
 - (iii) Allow not more than four inches between gates and barrier components; and
 - (iv) Be securely locked with a padlock, combination lock, or other suitable locking device.

8. Barriers must be clearly marked on all sides with signs indicating "Danger – Do Not Enter", "Authorized Personnel Only" or equivalent warning.
9. Barriers shall be placed at a sufficient distance from the trench to be unaffected by changing conditions of the trench site.

(4) The provisions of this section may be substituted by continuous personal monitoring of the unattended trench by the permit holder or by person(s) under the control and direction of the permit holder.

(5) The provisions of this section may be substituted by backfilling the work site while unattended.

(6) The permitting authority may require any additional, site-specific provisions it deems necessary to protect the general public as a condition to any permit issued.

Section 14.05 Suspension and Revocation of Permits; Assessment of Fines; Immediate Shut-Down; Appeals

(1) Scope 520 CMR 14.05 establishes the suspension and revocation procedures for all permits, establishes the penalty structure for the assessment of administrative penalties and sets forth the procedure for immediate shut down of the site.

(2) Revocation and Suspension of Permit by Permitting Authority. The permitting authority may, after a hearing, suspend or revoke a permit issued pursuant 520 CMR 14.03. All hearings under this section shall be held in accordance with G.L. c. 30A and 801 CMR 1.02. Each permitting authority shall have the discretion to establish the grounds consistent with this regulation for a suspension or revocation however such suspension or revocation shall not be imposed in a manner which directly, substantially or specifically regulates the occupational safety or health of any employee engaged in employment covered by the Federal Occupational Safety and Health Act.

(3) Assessment of Fines by the Department of Public Safety

(a) Notwithstanding any action taken by a permitting authority pursuant to 520 CMR

14.05 (2), the Department of Public Safety may assess administrative fines against the excavator in accordance with M.G.L. c. 82A § 1.

(b) Penalty Structure. Whenever the Department of Public Safety finds upon inspection, investigation or other information in its possession, that a violation of any provision of 520 CMR 14.00 has occurred, the Department may assess an administrative penalty not to exceed \$5,000.00 for each violation. Each day during which a violation exists shall constitute a separate offense.

(c) Factors in determining amount of penalty. In determining the amount of the administrative penalty, the Department of Public Safety may consider one or more of the following:

1. The willfulness of the violation;
2. Previous violations resulting in the imposition of administrative penalties as set forth in the rules of the Department of Public Safety;
3. Whether the violation resulted in an accident involving bodily injury or death to a member of the general public;
4. The actual or potential danger to the public;
5. Whether the excavator did everything reasonable to attempt to comply with the regulation;
6. Actions, if any, taken by the permitting authority;
7. Whether imposition of the administrative penalty is likely to deter future noncompliance; and

8. The interests of public safety.

(d) Notice. The Department of Public Safety shall send written notice of alleged violation(s) and intent to impose administrative penalties to the violator. The Notice shall specify:

1. The specific condition(s) which constitute the violation;
2. The provision(s) of the regulation with which there has been non-compliance;
3. The amount that is to be assessed as a penalty for each alleged violation;
4. The procedure for requesting a hearing as set forth in 520 CMR 14.05 (7).

(e) Hearings. Written requests for a hearing must be filed with the Department of Public Safety within ten calendar days of receipt of the notice of violation issued pursuant to 520 CMR 14.05 (7).

(4) The failure to make a timely request for a hearing shall constitute a waiver of the right to a hearing and imposition of the penalty set forth in the Notice. A hearing shall be commenced by the Department of Public Safety within a reasonable period after the request for a hearing has been received by the Department of Public Safety. Any person aggrieved by a determination of the Department of Public Safety may appeal to the Superior Court in accordance with M.G.L. c. 30A, §14.

(5) Immediate Shutdown by State or Local Authorities

(a) Whenever the permitting authority, or an inspector from either the Department of Public Safety or the Division of Occupational Safety deems a condition at a trench site to be a threat to public safety he may order that the area around the trench be made safe for the general public and may further order the immediate shutdown of the site until such time as the condition has been corrected to the satisfaction of the authority responsible for the immediate shutdown.

(b) Conditions which warrant immediate shutdown of a trench site by the local permitting authority, an inspector from the Department of Public Safety or the Division of Occupational Safety may include:

1. A fatality or serious injury to a member of the general public;
2. Failure to use protections for the General Public in accordance with this regulation or an ineffective use of any protection for the General Public allowed by 520 CMR 14.04;
3. Failure to obtain a permit from the permitting authority;
4. Any other condition that constitutes a serious threat to life, limb or property of the general public as determined by the permitting authority, an inspector from the Department of Public Safety, or the Division of Occupational Safety.

(6) Re-Inspection following Immediate Shutdown The trench site shall remain closed until all necessary repairs and corrections have been made to the satisfaction of the authority responsible for the immediate shutdown, provided however, that the Department of Public Safety and Division of Occupational Safety shall have concurrent jurisdiction to authorize the reopening of a trench shut down by either agency. Reopening of the site may not occur until the site has been inspected by the authority ordering the immediate shutdown and found to be safe for reopening and operation.

(7) Appeal from Immediate Shutdown. Any person aggrieved by the decision by the Department of Public Safety, the Division of Occupational Safety, or the permitting authority to shut down a trench site pursuant to 520 CMR 14.05 (5) may make an appeal for a hearing to the entity responsible for the immediate shutdown. The site shall remain shut down during the appeal period. Such appeal shall be made in writing within 10 calendar days. Upon receipt of the appeal, a hearing shall be scheduled promptly. All hearings under this provision shall be held in accordance with G.L. c. 30A and 801 CMR 1.02. Any person aggrieved by a decision after hearing may appeal to the Superior Court in accordance with G.L. c. 30A § 14.

(8) Serious Injury/Fatality; Notification; investigation.

(a) Notification. An excavator shall report all serious injuries or fatalities which occur at the location of a trench to the State Police within one hour from the time the serious injury occurred.

(b) Investigation. In the event that a serious injury or fatality occurs, the trench site shall be immediately secured. The site surrounding the trench shall not be disturbed, cleaned, or altered in any way except by a public authority or as necessary for the preservation of life and property or the removal of the injured person(s) until receiving express authorization from an inspector of the Department of Public Safety.

REGULATORY AUTHORITY

M.G.L. c. 82A, §§1-5.