

**State Damage Prevention Law Summary**  
**State: New York**  
(Link to State law provided in Law & Regulation section below)  
Summary Date: 8/7/2017

<b>Excavator Requirements</b>	
<b>Excavation: Definition</b>	16 NYCRR Rules and Regulations of the Public Service Commission, Chapter 07, Part 753-1.2. f. Demolition: The total or partial wrecking, razing, rendering, moving or removal of any structure. ... i. Excavation: Any operation for the purpose of movement or removal of earth, rock, pavement or other materials in or on the ground by use of mechanized equipment or by blasting, including but not limited to, digging, auguring, backfilling, boring, drilling, grading, plowing in, pulling in, fence post or pile driving, tree root removal, saw cutting, jack hammering, trenching and tunneling; provided, however, that the following shall not be deemed excavation: 1.movement of earth by tools manipulated only by human or animal power; 2.the tilling of soil for agricultural purposes; 3.vacuum excavation; and 4.saw cutting and jack hammering in connection with pavement restoration of a previous excavation where only the pavement is involved.
<b>Excavator: Definition</b>	Part 753-1.2. j. Excavator: Any person who is engaged in a trade or business which includes the carrying out of excavation or demolition; provided, however, that an individual employed by an excavator and having no supervisory authority other than the routine direction of employees over an excavation or demolition, shall not be deemed an excavator for the purpose of this Part. The act of any employee or agent of any excavator acting within the scope of his or her official duties or employment shall be deemed to be the act of such excavator.
<b>Excavator Notice to One Call Required (Yes / No)</b>	Yes
<b>Excavator Notice Minimum # Working Days Before Digging</b>	2
<b>Excavator Notice (Specific Language)</b>	<p>NY General Business Law (GBS) Article 36 § 764. 1. No excavator shall commence or engage in any excavation or demolition unless and until timely notice is served of the location and date of the proposed excavation or demolition as provided in this article to operators who maintain underground facilities in the area in which the excavation or demolition is to take place. The provision of such notice to a one-call notification system is deemed to be compliance with this section; and notice to the one-call notification center is notice to each member. Such notice shall be served in accordance with the rules and regulations adopted by the public service commission pursuant to section one hundred nineteen-b of the public service law.</p> <p>Part 753-3.1 (a) (1) Before commencing or engaging in any nonemergency excavation or demolition, each excavator shall provide notice of the location and date of the planned excavation or demolition to the one-call notification system serving the vicinity in which the excavation or demolition is to take place (2) Such notice shall be served at least two but not more than ten working days, not including the date of the call, before the commencement date of the excavation or demolition. (b) Excavation or demolition which is required to be performed promptly as a result of an emergency, disaster or to correct an immediate hazard may proceed immediately without prior notification to operators, if the situation is so serious that the excavation or demolition cannot reasonably be delayed. However, excavators shall notify the one-call notification system as soon as possible that such excavation or demolition is commencing or is underway. Extreme caution shall be employed by the excavator to prevent damage to existing underground facilities and to avoid endangering persons and property. (c) At least seven working days in advance of the commencement date of a demolition, the excavator shall request a pre-demolition conference, through the one-call notification system, with all member operators who have underground facilities at or near the demolition area. A pre-demolition conference may encompass one or more demolition(s) in the project area. A request for a pre-demolition conference is not a substitute for the notice of intent to perform demolition work required by Section 753-3.1 of this Part.</p>
<b>Ticket Life (# of days)</b>	Not addressed. However, Whenever an excavator postpones an excavation or demolition more than ten working days, the excavator must notify the one-call system anew (Part 753-3.1 (d) (2))
<b>White-Line Required (Yes / No)</b>	Yes. (Part.753-3.2 (b))
<b>Tolerance Zone</b>	24" (Part.753-1.2 (u))

<b>Special Digging Requirements Within Tolerance Zone (Specific Language)</b>	<p>Part 753-3.6 Where an underground facility has been staked, marked or otherwise designated by the operator and the tolerance zone overlaps with any part of the work area, or the projected line of a bore/directional drill intersects the tolerance zone, the excavator shall verify the precise location, type, size, direction of run and depth of such underground facility or its en-casement. Verification shall be completed before the excavation or demolition is commence or shall be performed as the work progresses. (a) Powered or mechanized equipment may be used within the tolerance zone for removal of pavement or masonry but only to the depth of such pavement or masonry. (1) Below the depth of pavement or masonry, powered equipment may be used in the tolerance zone prior to the verification of the location of facilities when agreed to in writing by the affected operator(s). (2) Operators, or their agents and contractors working under their direction, may use powered equipment to locate their own facilities within the tolerance zone. (b) The verification of underground facilities furnishing gas or liquid petroleum products shall be accomplished by the excavator by exposing the underground facility or its encasement to view by means of hand dug test holes at one or more points where the work area and tolerance zone overlap, or more points as designated by the operators of such facilities. (c) The verification of underground facilities other than those furnishing gas or liquid petroleum products shall be performed at one or more points for each such underground facility as may be required by the operator. Verification shall be accomplished by exposing the underground facility or its encasement to view by hand dug test holes or by other means mutually agreed to by the excavator and operator.</p> <p>Part 753-3.8 After verifying the location of an underground facility, the excavator shall not employ powered or mechanical excavating equipment closer than four inches in any direction from the staked, marked or otherwise designated or known outside diameter or perimeter of such facility or its protective coating unless agreed to in writing by the operator of the affected underground facility. Any such written agreement shall be furnished to the excavator by the operator, upon request.</p>
<b>Hand Dig / Vacuum or Soft Excavation Within Tolerance Zone (Yes / No)</b>	<p>Yes. (Part.753-3.6 (b))</p>
<b>Preserve / Maintain Marks Required (Yes / No)</b>	<p>Yes. (Part.753-3.5)</p>
<b>Call Again If No Response from Operator Or Signs Of Unmarked Facilities (Yes / No)</b>	<p>Yes. (Part.753-3.9)</p>
<b>Notify One-Call if Marks Moved or No Longer Visible (Yes / No)</b>	<p>Yes. (Part.753-3.4 (b))</p>
<b>Special Language Regarding Trenchless Technology (Yes / No)</b>	<p>No</p>
<b>Separate Locate Request Required for Each Excavator (Yes / No)</b>	<p>Yes. (Part.753-3.1 (a)(1))</p>
<b>Notify Operator of Damage (Yes / No)</b>	<p>Yes. (Part.753-3.10 (b))</p>
<b>Notify One Call Center of Damage (Yes / No)</b>	<p>No</p>
<b>Call 911 if Hazardous Materials Released (Yes / No)</b>	<p>Yes. (Part.753-3.14 (b))</p>
<b>Notice Exemptions (Yes / No)</b>	<p>Yes</p>
<b>Notice Exemptions (Specific Language)</b>	<p>Part 753-1.2 (i) Excavation: Any operation for the purpose of movement or removal of earth, rock, pavement or other materials in or on the ground by use of mechanized equipment or by blasting, including but not limited to, digging, auguring, backfilling, boring, drilling, grading, plowing in, pulling in, fence post or pile driving, tree root removal, saw cutting, jack hammering, trenching and tunneling; provided, however, that the following shall not be deemed excavation: (1) movement of earth by tools manipulated only by human or animal power; (2) the tilling of soil for agricultural purposes; (3) vacuum excavation; and (4) saw cutting and jack hammering in connection with pavement restoration of a previous excavation where only the pavement is involved</p> <p>Part 753-3.1 (a) (1) Before commencing or engaging in any non-emergency excavation or demolition, each excavator shall provide notice ... (b) Excavation or demolition which is required to be performed promptly as a result of an emergency, disaster or to correct an immediate hazard may proceed immediately without prior notification to operators, if the situation is so serious that the excavation or demolition cannot reasonably be delayed.</p>
<b>Operator Response</b>	

<b>Minimum # Days for Operator to Respond After Receiving Notice (Generally)</b>	2
<b>Operator Requirements to Respond to Locate Notification (Specific Language)</b>	<p>Part.753-4.5 (a) Prior to the stated commencement date of the excavation or demolition work as stated in the recorded notice, the operator shall make a reasonable attempt to inform the excavator, by means of an Automated Positive Response (APR) system, where available, or by means of direct communications with the excavator, where APR is not available, that either: (1) The operator has no underground facility in or within 15 feet of the work area; or (2) Every underground facility belonging to him or her which is located in or within 15 feet of the work area has been staked, marked or otherwise designated in accordance with the provisions of this Subpart. (b) Where an operator cannot complete the staking, marking or other designation of an underground facility prior to the stated commencement date and time of the excavation or demolition, the operator shall promptly report such fact to the excavator and shall inform the excavator of a prompt and practicable completion date which in no case shall be more than two working days after the excavator's stated commencement date, unless a longer period is agreed to by both parties. (c) Whenever an excavator requests a review of any staking, marking or other designation, the operator shall comply with such request as soon as possible.</p> <p>Part 753-4.6 (a) Whenever an operator's underground facilities are in or within 15 feet of a work area, such facility shall be located, accurately and with due care, by means of staking, marking or other designation in accordance with the provisions of this Subpart.</p> <p>Part 753-4.12 Requirements concerning demolition. In addition to responding in accordance with subdivision 753-4.6(a), the operator shall attend a pre-demolition conference with the excavator upon the excavators request.</p>
<b>Minimum Standards for Locator Qualifications (Yes / No)</b>	No
<b>Minimum Standards for Locator Qualifications (Specific Language)</b>	Not addressed
<b>Law Specifies Marking Standards Other Than Color (Yes / No)</b>	Yes
<b>Law Specifies Marking Standards Other Than Color (Specific Language)</b>	<p>Part 753-4.6 (b) The following staking and marking requirements shall apply: ... (2) All stakes and surface markings shall be color coded in accordance with the provisions of this Subpart in order to identify the type of underground facility so staked or marked; (3) Stakes and surface markings shall indicate in inches the size or diameter of the underground facility or its encasement, if known; (4) Each stake and surface marking shall indicate in inches the depth of the underground facility at that point, if known; ... (6) Where conditions exist so as to render center line staking or marking impractical or confusing, the operator may indicate the location of an underground facility by means of offset staking or remote tie-in markings which will clearly indicate the location and direction of run of the facility. (c) If staking or marking are not used to indicate the location of an underground facility, the operator shall designate such location in accordance with the following: (1) By exposing the underground facility or its encasement to view within the work area in a manner sufficient to allow the excavator to verify the type, size, direction of run and depth of the facility; (2) By providing field representation and instruction to the excavator in the work area; or (3) By any other means as mutually agreed to by the operator and excavator, including but not limited to written descriptions, photographs and verbal instructions. Such agreement shall be provided in writing to the excavator upon his or her request.</p> <p>Part 753-4.8 All staking and marking utilized for the location of underground facilities shall contain letter designations which will clearly identify the type of underground facility so staked or marked. Such letters shall comply with the following code: (a) C - Communication facilities (other than telephone service). (b) CH - Chemicals. (c) CTV - Cable television. (d) E - Electrical power. (e) FS - Fire signals. (f) G - Gas. (g) HPW - High-pressure water (100 psig or more). (h) P - Petroleum. (i) PP - Petroleum products (naphtha, gasoline, kerosene and similar products). (j) S - Sewer. (k) ST - Steam. (l) T - Telephone company services. (m) TC - Traffic control signals. (n) W - Water. (o) O - All other facilities.</p>
<b>Law Includes Specific Language For Operators To Locate Sewer Laterals (Yes / No)</b>	No
<b>Law Includes Specific Language For Operators To Locate Abandoned Facilities (Yes / No)</b>	No
<b>Operator Must Locate Abandoned Facilities (Specific Language)</b>	Not addressed

<b>Positive Response Required - Operator Contact Excavator (Yes / No)</b>	Yes
<b>Positive Response Required - Operator Contact Excavator (Specific Language)</b>	Part 753-4.5 (a) Prior to the stated commencement date of the excavation or demolition work as stated in the recorded notice, the operator shall make a reasonable attempt to inform the excavator, by means of an Automated Positive Response (APR) system, where available, or by means of direct communications with the excavator, where APR is not available, that either: (1) The operator has no underground facility in or within 15 feet of the work area; or (2) Every underground facility belonging to him or her which is located in or within 15 feet of the work area has been staked, marked or otherwise designated in accordance with the provisions of this Subpart. (b) Where an operator cannot complete the staking, marking or other designation of an underground facility prior to the stated commencement date and time of the excavation or demolition, the operator shall promptly report such fact to the excavator and shall inform the excavator of a prompt and practicable completion date which in no case shall be more than two working days after the excavator's stated commencement date, unless a longer period is agreed to by both parties.
<b>Positive Response Required - Operator Contact One Call Center (Yes / No)</b>	No
<b>Positive Response Required - Operator Contact One Call Center (Specific Language)</b>	Not addressed
<b>Positive Response - One-Call Automated (Yes / No)</b>	Yes. (Part 753-4.5 (a))
<b>Operator Must Provide One-Call Center with Information On Locations of Buried Facilities (Yes / No)</b>	No
<b>Operator Must Provide One-Call Center with Information On Locations of Buried Facilities (Specific Language)</b>	Not addressed
<b>Operator Must Update Information On Locations of Buried Facilities (Yes / No)</b>	No
<b>Operator Must Update Information On Locations of Buried Facilities (Specific Language)</b>	Not addressed
<b>New Facilities Must Be Locatable Electronically (Yes / No)</b>	No
<b>New Facilities Must Be Locatable Electronically (Specific Language)</b>	Not addressed
<b>Design Request (Yes / No)</b>	Yes. (Part 753-4.14)
<b>One Call, Enforcement, and Reporting</b>	
<b>Mandatory One Call Membership (Yes / No)</b>	Yes. (Part 753-4.1)
<b>One Call Membership Exemptions (Yes / No)</b>	Yes

<b>One Call Membership Exemptions (Specific Language)</b>	<p>Part 753-1.2 (q) Operator: Any person who operates an underground facility to furnish any of the following services or materials: electricity, gases, steam liquid petroleum products, telephone or telegraph communications, cable television, sewage removal, traffic control systems, or water. ... (v) Underground facility: A facility and its attachments located underground and installed by an operator to furnish its services or materials, including but not limited to, pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels and any encasement containing such facilities. Such term shall not include oil and gas production and gathering pipeline systems used primarily to collect oil or gas production from wells.</p> <p>§ 753-4.1 (a) Every operator of an underground facility shall participate in a one-call notification system within whose geographical jurisdiction or boundaries such underground facility is located. ...</p>
<b>One-Call Law Addresses Board Make-Up (Yes / No)</b>	No
<b>One-Call Law Addresses Board Make-Up (Specific Language)</b>	Not addressed
<b>Separate Body Designated to Advise Enforcement Authority (Yes / No)</b>	No
<b>Separate Body Designated to Advise Enforcement Authority (Specific Language)</b>	Not addressed
<b>Penalties / Fines Excavators (Yes / No)</b>	Yes
<b>Penalties / Fines Excavators (Specific Language)</b>	<p>NY GBS.36 § 765.1. Civil penalties. a. Failure to comply with any provision of this article shall subject an excavator or an operator to a civil penalty of up to two thousand five hundred dollars for the first violation and up to an additional ten thousand dollars for each succeeding violation that occurs within a twelve month period. b. The penalties provided for by this article shall not apply to an excavator who damages an underground facility due to the failure of the operator to comply with any of the provisions of this article nor shall in such instance the excavator be liable for repairs as prescribed in subdivision four of this section.</p>
<b>Penalties / Fines Operators (Yes / No)</b>	Yes
<b>Penalties / Fines Operators (Specific Language)</b>	<p>NY GBS.36 § 765.1. Civil penalties. a. Failure to comply with any provision of this article shall subject an excavator or an operator to a civil penalty of up to two thousand five hundred dollars for the first violation and up to an additional ten thousand dollars for each succeeding violation that occurs within a twelve month period. b. The penalties provided for by this article shall not apply to an excavator who damages an underground facility due to the failure of the operator to comply with any of the provisions of this article nor shall in such instance the excavator be liable for repairs as prescribed in subdivision four of this section.</p>
<b>Penalties / Fines Other (Yes / No)</b>	No
<b>Penalties / Fines Other (Specific Language)</b>	Not addressed
<b>Enforcement Authority Identified</b>	<p>NY Public Service Commission</p> <p>NY GBS.36 § 765.1 (c) An action to recover a penalty under this article may be brought in the supreme court in the judicial district in which the violation was alleged to have occurred which shall be commenced and prosecuted by the attorney general. The public service commission shall, pursuant to section one hundred nineteen-b of the public service law, forward to the attorney general its determination of the amount of the penalty for violations of rules and regulations adopted to implement the requirements of this article. Upon receipt of such determination, the attorney general may commence an action to recover such penalty.</p>
<b>Damage Investigation Required by Enforcement Authority (Yes / No)</b>	No
<b>Mandatory Reporting of Excavation Damage by All Utility Owners to State Entity or Department (Yes / No)</b>	No
<b>Mandatory Reporting by Excavators to State Entity or Department (Yes / No)</b>	No

<b>Mandatory Reporting to State Entity or Department - Gas Only (Yes / No)</b>	No
<b>Law and Regulation</b>	
<b>Statute / Law (Name &amp; Link)</b>	<a href="#">New York General Business Law (GBS) Article 36: Protection of Underground Facilities, § 760 - 767</a> ( <a href="http://codes.lp.findlaw.com/nycode/GBS/36">http://codes.lp.findlaw.com/nycode/GBS/36</a> ) <a href="#">Also see One-Call Center Website for Information on State Law.</a>
<b>Date of Last Revision to Statute / Law</b>	March 29, 2013
<b>Administrative Rules / Regulations (Yes / No)</b>	Yes
<b>Administrative Rules / Regulations (Name &amp; Link)</b>	16 NYCRR Rules and Regulations of the Public Service Commission, Chapter 07, Part 753 - Protection of Underground Facilities (Referenced as NYCRR Part 753) For ease of reference, see either ( <a href="http://newyork-811.com/the-law/">http://newyork-811.com/the-law/</a> ) or ( <a href="https://www.digsafelynewyork.com/resources/nys-code-rule-753">https://www.digsafelynewyork.com/resources/nys-code-rule-753</a> )
<b>State One Call Center(s) (Name &amp; Link)</b>	(1) Dig Safely. New York -- ( <a href="http://www.digsafelyny.com/">http://www.digsafelyny.com/</a> ); (2) NewYork811 (five Boroughs and Nassau and Suffolk Counties on Long Island) -- ( <a href="http://newyork-811.com/">http://newyork-811.com/</a> )
<b>Miscellaneous Notes</b>	
<b>Notes</b>	0
<b>State Damage Prevention / One-Call Law Recently Revised With Future Implementation Dates</b>	0