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CH. 71 UNDERGROUND UTILITY DAMAGE PREVENTION

CHAPTER 71
UNDERGROUND UTILITY DAMAGE PREVENTION

SOURCE: Entire Chapter added as GC § 21050 - § 21059 by P.L. 15-100:1. Codified in this Title by Compiler because this Chapter deals with permits and notices required to be had and given by several different agencies in connection with excavations and the like.

- § 71101. Definitions.
- § 71102. Excavation and Demolition Permits.
- § 71103. Prohibition
- § 71104. Notice of Intent to Excavate or Demolish.
- § 71105. Response to Notice of Intent to Excavate or Demolish
- § 71106. Emergency Excavation or Demolition.
- § 71107. Precautions to Avoid Damage.
- § 71108. Excavation or Demolition Damage.
- § 71109. Damages: Cost of Repairing.
- § 71110. Civil Penalties.

§ 71101. Definitions.

As used in this Chapter:

(1) Damage includes the substantial weaning of structural or lateral support of an underground utility; penetration or destruction of any protective coating, housing or other protective device of an underground utility; and the partial or complete severance of an underground utility.

(2) 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.

(3) Excavate or excavation means an operation for the purpose of the movement or removal of earth, rock or other materials in or on the ground by use of mechanized equipment or by discharge of explosives, including augering, backfilling, digging, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling, but not including the tilling of soil for agricultural purposes.

(4) Mechanized equipment means equipment operated by means of mechanical power, including trenchers, bulldozers, power shovels,

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augers, back hoes, scrapers, drills, cable and pipe plows and other equipment used for plowing-in cable or pipe.

(5) Person means any individual, any corporation, partnership, association or any other entity organized under the laws of the territory of Guam.

(6) Utility means any means any pipe, conduit, duct, wire, cable, valve, line, fiber optic equipment, system, facility, or other structure which is buried or placed below ground or submerged for use in connection with production, storage, conveyance, transmission, distribution or protection of any electronic communication system, telecommunications system, or fiber optic, electricity, oil, natural gas, gases, steam, mixture of gases, petroleum, petroleum products, flammable fluids, or other substances of like nature or water or water systems, sewer systems or traffic, drainage control systems, or other items of like nature.

(7) *Operator* means any person, individual, governmental agency or their agents, joint venture, firm, partnership, association, or corporation who owns or operates, a public or private underground facility or utility which furnishes a service or material or stores, transports, or transmits an electronic communication system, telecommunications system, or fiber optic, electricity, oil, natural gas, gases, steam, mixture of gases, petroleum, petroleum products, flammable fluids, or other substances of like nature or water or water systems, sewer systems or traffic, drainage control systems, or other items of like nature.

Operator also means the entities responsible for operating the public utilities of Guam specifically Guam Power Authority, Guam Waterworks Authority and the incumbent local exchange carrier as defined by § 12102 (e), Title 12, Guam Code Annotated.

(8) Working day means every day, except Saturday, Sunday and national and legal holidays.

SOURCE: Subsections (6) and (7) amended by P.L. 29-090:2, 3 (July 18, 2008). Subsection (7) amended by P.L. 29-146:4 (Jan. 30, 2009).

§ 71102. Excavation and Demolition Permits.

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A permit issued pursuant to law, authorizing excavation or demolition operations, shall not be deemed to relieve a person from the responsibility of complying with the provisions of this Chapter.

§ 71103. Prohibition.

Except as provided in § 71106 of this Chapter, no person may excavate in a street, highway, public space, a private easement of an operator, or near the location of a utility installed on the premises of a customer served by such utility, or demolish a building without having first ascertained the location of all underground utilities that would be affected by the proposed excavation or demolition.

SOURCE: Amended by P.L. 29-090:4 (July 18, 2008).

§ 71104. Notice of Intent to Excavate or Demolish.

Except as provided in § 71106 of this Chapter, before commencing any excavation or demolition operation designated in § 71103 of this Chapter, each person responsible for that excavation or demolition shall serve written notice or intent to excavate or demolish at least three (3) but not more than ten (10) full working days on each operator having underground utilities located in the proposed area of excavation or demolition, the Department of Public Works and the village mayor of the proposed area of excavation or demolition. The written notice shall contain the name, address and telephone number of the person filing the notice of intent and, if different, the person responsible for excavation or demolition, the starting date, anticipated duration, and type of excavation or demolition operation to be conducted, the location of the proposed excavation or demolition, and whether or not explosives are to be used.

SOURCE: Repealed and reenacted by P.L. 27-110:13. Amended by P.L. 29-090:5 (July 18, 2008).

§ 71105. Response to Notice of Intent to Excavate or Demolish.

(a) Each operator notified in accordance with § 71104 of this Chapter, *shall, not less than* five (5) working days in advance of the proposed excavation or demolition (unless a shorter period is provided by agreement between the person responsible for the excavation *or* demolition and the operation), supply, by use of maps when appropriate, the following information to the person responsible for the excavation or demolition:

(1) The approximate location and description of all of its underground utilities which may be damaged as a result of the

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excavation *or* demolition, including as built drawings of the utilities *or* underground facilities maintained by the operator filed at the Department of Public Works in accordance with § 66210 of Title 21, Guam Code Annotated, *if* available.

(2) The location and description of all utility markers indicating the approximate location of the underground utilities.

(3) Any other information that would assist that person in locating and thereby avoiding damage to the underground utilities including, the provision of adequate temporary markings indicating the approximate location of the underground utility in locations where permanent utility markers do *not* exist.

(b) For purposes of this Section, the approximate location of underground utilities is defined as a strip of land at least three (3) feet wide but *not* wider than the width of the utility plus 1.5 feet on either side of the utility.

(c) Failure by the operator to maintain and provide information described in subsection (a) above *as built* drawings from Department of Public Works' *or* its own records existing prior to the excavation *or* demolition, *shall* preclude operator from recovering for repair of damages to underground utilities, facilities, *or* lines as provided for in Chapter 71.”

(d) The operator *shall not* be liable for repair of damages to underground utilities, facilities, *or* lines when it is determined that the damages occurred within an area cleared by the information described in (a) above.

SOURCE: Amended by P.L. 29-090:6 (July 18, 2008), P.L. 29-146:3 (Jan. 30, 2009).

§ 71106. Emergency Excavation or Demolition.

Compliance with the notice requirements of § 71104 of this Chapter is not required of persons responsible for emergency excavation or demolition to ameliorate an imminent danger to life, health or property, provided, however, that those persons give, as soon as practicable, oral notice of the emergency excavation or demolition to each operator having underground utilities located in the area where that excavation or demolition is to be performed and the Department of Public Works and requests emergency assistance from each operator so identified in locating and providing immediate protection to its underground utilities. An “imminent danger to

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life, health or property” means whenever there is a substantial likelihood that loss of life, health or property will result before the procedures under this Chapter can be fully complied with.

SOURCE: Amended by P.L. 29-090:7 (July 18, 2008).

§ 71107. Precautions to Avoid Damage.

In addition to the notification requirements of § 71104 of this Chapter, each person responsible for any excavation or demolition operation designated in § 71103 of this Chapter shall:

(1) Plan the excavation or demolition to avoid damage to or minimize interference with underground utilities in and near the construction area.

(2) Maintain a clearance between an underground utility and the cutting edge or point of any mechanized equipment, taking into account the known limit of control of such cutting edge or point, as may be reasonably necessary to avoid damage to such utility.

(3) Provide such support for underground utilities in and near the construction area, including during backfill operations, as may be reasonable for the protection of such utilities.

SOURCE: Amended by P.L. 29-090:8 (July 18, 2008).

§ 71108. Excavation or Demolition Damage.

Each person responsible for any excavation or demolition operation designated in §71103 of this Chapter that results in any damage to an underground utility shall, immediately upon discovery of that damage, notify the operator of such utility of the location and nature of the damage and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such utility.

SOURCE: Amended by P.L. 29-090:9 (July 18, 2008).

§ 71109. Damages: Cost of Repairing.

Any person who damages a utility line or roadway is subject to pay for all costs incurred by the operator to restore the utility or roadway to its original condition. The operator which has suffered damage, and has caused the repair of such damage shall present the contractor or person responsible

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for the damage with a bill for repair of the damage no later than sixty (60) days after the damage has been repaired.

If the operator of a utility fails to present the contractor within sixty (60) days after the damage has been repaired, the utility operator may not withhold excavating clearance for other projects for which clearance have been requested.

This Section shall apply to all government of Guam agencies performing work which results in the damaging of utility infrastructure as defined in this Act.

SOURCE: Amended by P.L. 25-34:6.

NOTE: P.L. 25-34:2 defines utilities to include roadways which is referred to in this Act.

§ 71110. Civil Penalties.

Any person who violates any provision of this Chapter may be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for the first violation, and not to exceed Ten Thousand Dollars (\$10,000.00) for each successive violation within a five (5) year period. Actions to recover the penalty provided for in this Section may be brought by an attorney representing the Operator, or by the Attorney General, at the request of any person on Guam, in which the cause, or some part thereof, arose or in which the defendant has its principle place of business or resides. All penalties recovered in any such actions shall be paid to the operator of the utility which was damaged. In the case of roadways, the penalties shall be deposited into the Territorial Highway Fund. This Chapter does not affect any civil remedies for personal injury or property, including underground utilities, damage except as otherwise specifically provided for in this Chapter.

SOURCE: Amended by P.L. 25-34:3.
