



The Commonwealth of Massachusetts

Pursuant to G.L. c. 82A §1 and 520 CMR 14.00 et seq. (as amended)



Town of Uxbridge
21 South Main Street
Uxbridge, MA 01569
(508) 278-8600

TRENCH PERMIT APPLICATION

This Section For Official Use Only

Permit Number: _____
Dig Safe Number: _____

Date Issued: _____

Signature: _____
or [Permitting authority]

SECTION 1 - SITE INFORMATION

1.1 Property Address:

1.3 Description, location and purpose of proposed trench:

Street Name

Uxbridge Zip Code 01569

City / Town

1.4 Anticipated Date to Begin Trench Operation

1.2 Map Number _____ Lot/Parcel Number _____
Builder's Lot No _____ Block _____

1.5 Anticipated Date Conclude Trench Operation

SECTION 2 - PROPERTY OWNERSHIP AND PERMIT HOLDER INFORMATION

2.1 Owner of Record:

Name: (Print) _____ Address: _____

Signature _____ Telephone: _____

2.2 Excavator Permit Holder Information:

Name: (Print) _____ Address _____

Signature: _____ Telephone: _____

2.3 Name and Contact Information of Insurer:

Company Name _____ Telephone _____

Address _____

Insurance Certificate #: _____ Policy Expiration Date _____

U.S. 10 503
policy
att. 5/6/09
mtg minutes



TOWN OF UXBRIDGE
OFFICE OF THE TOWN MANAGER
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Michael Szlosek,
Town Manager

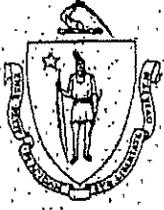
TO: Building Inspector
DPW
FROM: Michael Szlosek *MS*
DATE: May 11, 2009
RE: Trench Permits

At a regularly scheduled Board of Selectmen's meeting on May 6, 2009, the Board voted to adopt a Trench Application Permit Policy in accordance with Chapter 82A which was enacted in 2002 after the death of a four year old girl who fell into an unattended open trench.

Attached are the regulations and trench permit application. The Building Department will process the permit application. The application fee is \$10.00 for the permit. If the permit is sought in conjunction with other permitting applications, the fee will be waived. No site inspections are required.

If you have any questions, please contact the Office of the Town Manager.

/ta
Attachments



Deval L. Patrick
Governor

Timothy P. Murray
Lieutenant Governor

The Commonwealth of Massachusetts
Department of Public Safety

§
Department of Labor, Division of Occupational Safety
Boston, Massachusetts 02108

www.mass.gov

Kevin M. Burke
Secretary
Executive Office of Public Safety
& Security

Suzanne M. Bump
Secretary
Executive Office of Labor &
Workforce Development

Thomas G. Gatzunis, P.E.
Commissioner
Department of Public Safety

Laura M. Marlin
Commissioner
Division of Occupational Safety

MEMORANDUM

TO: The Commonwealth of Massachusetts Trench Permitting Authorities
FROM: *TGG* Thomas G. Gatzunis, Commissioner, DPS; Laura Marlin, Commissioner, DOS *JM*
RE: Excavation and Trench Safety
DATE: April 16, 2009

Chapter 82A ("the statute") was enacted in 2002 after the death of a four-year-old girl who fell into an unattended, open trench. The statute requires the Department of Public Safety ("DPS") and the Division of Occupational Safety ("DOS") to write regulations regarding "construction related excavations and trench safety." The Excavation and Trench Safety regulations promulgated in 520 CMR 14.00 ("the regulations") went into effect on March 1, 2009.

During the course of the implementation period, the DPS and DOS have received numerous inquiries regarding the regulations, and we have tried to address the questions through the FAQ section on the DPS website (www.mass.gov/dps/trenches). In particular, questions regarding the definitions of "Excavator", "Permit holder" and operator repeatedly arise, and there appears to be a great deal of confusion and inconsistency amongst the municipalities in applying these definitions. This Memorandum is intended to clarify these issues and also serves to notify you of Emergency Regulations amending 520 CMR 14.00 to address these and other issues which have arisen. The Emergency Regulations were filed with the Secretary of State's Office on Thursday, April 16, 2009 and are now in effect.

I. Excavator; Permit Holder; Operator

By statute, the "excavator" is defined as follows:

any entity including, but not limited to, a person, partnership, joint venture, trust, corporation, association, public utility, company or state or local government body which performs excavation operations. See M.G.L. c. 82, § 40 [emphasis added]

522 CMR 14.02 defines the "Permit Holder" as "the excavator who is responsible for acquiring a permit from the Permitting Authority."

Therefore, the "Excavator" is responsible for securing the permit and is the "Permit Holder." Please note, however, that the term "Excavator" is broadly defined by statute. Therefore, while the Excavator/Permit Holder *may* be the same person or entity as the operator, there is *no requirement* that this be so. In fact, in the vast majority of cases, the Excavator/Permit Holder and the operator will not be the same. Further, there is no requirement that the Excavator hold a hoisting license, provided that all of the operators who are operating hoisting equipment on the project are properly licensed. See M.G.L. c. 82A, § 3(4); M.G.L. c. 146, § 65 and 520 CMR 6.00.

By way of illustration, an individual digging a trench in his or her backyard may be the person making the application for the permit and therefore be the Excavator/Permit Holder. This individual may also be the operator. Please note, however that a homeowner digging a trench on his or her property must possess a valid DPS issued hoisting license except where the trench is created with hand tools or other equipment exempt from the hoisting license requirements pursuant to M.G.L. c. 146, § 65 and 520 CMR 6.00. See also M.G.L. c. 82A, § 3(4).

Conversely, a public utility company which is performing excavations in a city or town public way would most likely be the Excavator/Permit Holder who would then hire operators (who hold valid DPS issued hoisting licenses) to dig the actual trenches.

There has also been confusion over whose responsibility it is to provide the insurance required under Chapter 82A, § 2. Pursuant to section 2, it is the Excavator/Permit Holder, which may or may not be the operator, who is required to provide a certificate of insurance with general liability coverage of \$100,000 per person and \$300,000 per claim or provide evidence of self-insurance in equal amounts. See M.G.L. c. 82A, § 2.

Finally, pursuant to section 1 of G.L. c. 82A, the Excavator/Permit Holder is responsible for ensuring that the trench is not left unattended without first implementing the protections for the general public required in 520 CMR 14.04. For more complete information on all of the responsibilities of the Excavator/Permit Holder please review the entire Regulation.

II. Emergency Regulations

The DPS and the DOS have filed emergency regulations amending 520 CMR 14.00. Highlights of the changes are as follows:

- Several definitions in section 14.02 have been amended. These changes include:
 - The definition of "public agency" specifically excludes cities and towns.
 - The term "general public" has been amended to include all people not engaged in construction activities at the trench. Consequently, any person engaged in construction activities at the trench is not a member of the general public.
 - The term "unattended trench" has been amended to mean that an "unattended trench" is when all people engaged in the construction activities at the trench are not present. Therefore, the trench will be attended if any individual engaged in construction activities is present at the trench.
- A hoisting license number and the name of a competent person on the permit application are no longer required.

- 520 CMR 14.03(2)(c) was amended to clarify that trenches created on land owned or controlled by a Public Agency should be permitted by that Public Agency which owns or controls the property, and not the city or town where the trench is located.
- After a trench site has been shut down, re-inspection of the site must occur within two (2) business days of notification to the permitting authority that the repairs/corrections have been made. This change resulted from comments made to the DPS and DOS and was implemented to ensure that trench sites are promptly reopened after they are made safe. *See* 520 CMR 14.05(6).
- The regulations now incorporate the statutory requirement that gas, water, telephone and community antenna companies that pay fees for permits to excavate a public way are exempt from paying a trench permit fee for the same excavation. *See* 520 CMR 14.03(6).
- Permitting authorities are authorized to issue a single permit for multiple trenches dug during one project. *See* 520 CMR 14.03(2).
- The permit must be shown to the hoisting operator in accordance with M.G.L. c. 82A, § 3(4).
- Temporary fencing requirements have been amended by allowing openings greater than 4 inches to be protected by certain guards. *See* 520 CMR 14.04(2)(b)(5).

Attached please find a copy of the emergency regulations. Please visit the DPS website at www.mass.gov/dps or the DOS website at www.mass.gov/dos for additional information.

Trench Permit FAQ's

What is a trench permit, and why is it required?

The State of Massachusetts has instituted a new Trench Regulation effective March 1st of this year. The regulations (520 CMR 14.00: Excavation and Trench Safety) were written following the enactment of Chapter 82A, known as Jackie's Law. The law requires a permit for all trenches three or more feet deep. In order to obtain a permit the applicant must identify the excavator, and provide insurance information, as well as a brief description of the proposed excavation.

The law was passed following the death of a 4-year-old child, who was buried when an unattended trench collapsed in a private backyard. The law is intended to protect the public from dangerous or unattended trenches.

How do I know if I need a permit?

The law applies to all trenches, which are defined as "an excavation which is narrow in relation to its length, made below the ground surface in excess of **three 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 not greater than 15 feet".

The major component of the new regulations is the requirement that excavators obtain a permit prior to creating any trench, whether it is in a public way or on private property. This regulation applies to contractors as well as homeowners.

In short, if the trench will be three feet or more deep, you will need a permit.

Who issues the permit?

If the trench is located in the public way or, in a part of a subdivision that will become a public way, it is issued by the DPW. If it is on private property it is issued by Building Department.

What information is required for the permit application?

In order to apply for a trench permit you will need the following information:

1. DIG-SAFE information;
2. The owner of record of the property.
3. The name and contact information of the excavator performing the excavation of the trench;
4. A description of the trench including the location and purpose.
5. The name and contact number of the insurer;

6. The required certificate of insurance, Massachusetts General Law Chapter 82A Section 2 requires that a person making application for a trench excavation permit shall produce a certificate of insurance with general liability coverage of \$100,000 per person and \$300,000 per claim or provide evidence of self-insurance in equal amounts.

Is there a fee?

There is no fee if the permit is issued in conjunction with road opening permit issued by the DPW or a building, plumbing or electrical permit issued by the building department. The cost of the trench permit is included in the cost of these permits. For all other permits a fee of \$10.00 for processing is payable to the Town of Uxbridge.

What do I do with the permit?

When you receive your permit you will also receive a summary of the State regulations regarding trenches. If they are not familiar with these you should read them before beginning work. The permit itself must be conspicuously posted at the job site.

Is an inspection required?

In most circumstances no inspection is required. Inspections will be performed only when a report of an unsafe or unattended trench is received. In such cases the Town is required to inspect. If a trench is found to be in an unsafe condition the Town may order that it be secured or filled.

BY SIGNING THIS FORM, THE APPLICANT/EXCAVATOR AND OWNER, ACKNOWLEDGE AND CERTIFY THAT THEY ARE FAMILIAR WITH, OR, BEFORE COMMENCEMENT OF THE WORK, WILL BECOME FAMILIAR WITH, ALL LAWS AND REGULATIONS APPLICABLE TO WORK PROPOSED, INCLUDING OSHA REGULATIONS, G.L. c. 82A, 520 CMR 7.00 et seq., AND ANY APPLICABLE MUNICIPAL ORDINANCES, BY-LAWS AND REGULATIONS AND THEY COVENANT AND AGREE THAT ALL WORK DONE UNDER THE PERMIT ISSUED FOR SUCH WORK WILL COMPLY THEREWITH IN ALL RESPECTS AND WITH THE CONDITIONS SET FORTH BELOW.

THE UNDERSIGNED OWNER AUTHORIZES THE APPLICANT/EXCAVATOR TO APPLY FOR THE PERMIT AND THE EXCAVATOR TO UNDERTAKE SUCH WORK ON THE PROPERTY OF THE OWNER, AND ALSO, FOR THE DURATION OF CONSTRUCTION, AUTHORIZES PERSONS DULY APPOINTED BY THE MUNICIPALITY TO ENTER UPON THE PROPERTY TO MONITOR AND INSPECT THE WORK FOR CONFORMITY WITH THE CONDITIONS ATTACHED HERETO AND THE LAWS AND REGULATIONS GOVERNING SUCH WORK.

THE UNDERSIGNED APPLICANT/EXCAVATOR AND OWNER AGREE JOINTLY AND SEVERALLY TO REIMBURSE THE MUNICIPALITY FOR ANY AND ALL COSTS AND EXPENSES INCURRED BY THE MUNICIPALITY IN CONNECTION WITH THIS PERMIT AND THE WORK CONDUCTED THEREUNDER, INCLUDING BUT NOT LIMITED TO ENFORCING THE REQUIREMENTS OF STATE LAW AND CONDITIONS OF THIS PERMIT, INSPECTIONS MADE TO ASSURE COMPLIANCE THEREWITH, AND MEASURES TAKEN BY THE MUNICIPALITY TO PROTECT THE PUBLIC WHERE THE APPLICANT OWNER OR EXCAVATOR HAS FAILED TO COMPLY THEREWITH INCLUDING POLICE DETAILS AND OTHER REMEDIAL MEASURES DEEMED NECESSARY BY THE MUNICIPALITY.

THE UNDERSIGNED APPLICANT/EXCAVATOR AND OWNER AGREE JOINTLY AND SEVERALLY TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE MUNICIPALITY AND ALL OF ITS AGENTS AND EMPLOYEES FROM ANY AND ALL LIABILITY, CAUSES OR ACTION, COSTS, AND EXPENSES RESULTING FROM OR ARISING OUT OF ANY INJURY, DEATH, LOSS, OR DAMAGE TO ANY PERSON OR PROPERTY DURING THE WORK CONDUCTED UNDER THIS PERMIT.

DATE _____
EXCAVATOR SIGNATURE

DATE _____
OWNER'S SIGNATURE (IF DIFFERENT)

For City/Town use -- Do not write in this section

PERMIT APPROVED BY _____

PERMITTING AUTHORITY Building Commissioner / Inspector of Buildings
Director of Public Works

Date _____

CONDITIONS AND REQUIREMENTS PURSUANT TO G.L.C.82A AND 520 CMR 14.00 et seq. (as amended)

By signing the application, the applicant/excavator understands and agrees to comply with the following:

- i. No trench may be excavated unless the requirements of sections 40 through 40D of chapter 82, and any accompanying regulations, have been met and this permit is invalid unless and until said requirements have been complied with by the excavator applying for the permit including, but not limited to, the establishment of a valid excavation number with the underground plant damage prevention system as said system is defined in section 76D of chapter 164 (DIG SAFE);
- ii. Trenches may pose a significant health and safety hazard. Pursuant to Section 1 of Chapter 82 of the General Laws, an excavator shall not leave any open trench unattended without first making every reasonable effort to eliminate any recognized safety hazard that may exist as a result of leaving said open trench unattended. Excavators should consult regulations promulgated by the Department of Public Safety in order to familiarize themselves with the recognized safety hazards associated with excavations and open trenches and the procedures required or recommended by said department in order to make every reasonable effort to eliminate said safety hazards which may include covering, barricading or otherwise protecting open trenches from accidental entry.
- iii. Persons engaging in any 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".
- iv. Excavators engaging in any trenching operation who utilize hoisting or other mechanical equipment subject to chapter 146 shall only employ individuals licensed to operate said equipment by the Department of Public Safety pursuant to said chapter and this permit must be presented to said licensed operator before any excavation is commenced;
- v. By applying for, accepting and signing this permit, the applicant hereby attests to the following: (1) that they have read and understands the regulations promulgated by the Department of Public Safety with regard to construction related excavations and trench safety; (2) that he has read and understands the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 et seq., entitled Subpart P "Excavations" as well as any other excavation requirements established by this municipality; and (3) that he is aware of and has, with regard to the proposed trench excavation on private property or proposed excavation of a city or town public way that forms the basis of the permit application, complied with the requirements of sections 40-40D of chapter 82A.

The permit shall be posted in plain view on the site of the trench.

Summary of Excavation and Trench Safety Regulation (520 CMR 14.00 et seq.)

This summary was prepared by the Massachusetts Department of Public Safety pursuant to G.L.c.82A and does not include all requirements of the 520 CMR 14.00. To view the full regulation and G.L.c.82A, go to www.mass.gov/dps

Pursuant to M.G.L. c. 82, § 1, the Department of Public Safety, jointly with the Division of Occupational Safety, drafted regulations relative to trench safety. The regulation is codified in section 14.00 of title 520 of the Code of Massachusetts Regulations. The regulation requires all excavators to obtain a permit prior to the excavation of a trench made for a construction-related purpose on public or private land or rights-of-way. All municipalities must establish a local permitting authority for the purpose of issuing permits for trenches within their municipality. Trenches on land owned or controlled by a public (state) agency requires a permit to be issued by that public agency unless otherwise designated.

In addition to the permitting requirements mandated by statute, the trench safety regulations require that all excavators, whether public or private, take specific precautions to protect the general public and prevent unauthorized access to unattended trenches. Accordingly, unattended trenches must be 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 or openings greater than 4" may be protected by solid guards or suitable materials, including plywood or wood planks; backfilling must be sufficient to eliminate the trench. Alternatively, excavators may choose to attend trenches at all times, for instance by hiring a police detail, security guard or other attendant who will be present during times when the trench will be unattended by the excavator.

The regulations further provide that local permitting authorities, the Department of Public Safety, or the Division of Occupational Safety may order an immediate shutdown of a trench in the event of a death or serious injury; the failure to obtain a permit; or the failure to implement or effectively use adequate protections for the general public. The trench shall remain shutdown until re-inspected and authorized to re-open provided, however, the excavators shall have the right to appeal an immediate shutdown. Re-inspection must occur within two (2) business days of written notifications by the excavator to the Permitting Authority that it has complied with all repairs/corrections ordered. Permitting authorities

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are further authorized to suspend or revoke a permit following a hearing. Excavators may also be subject to administrative fines issued by the Department of Public Safety for identified violations.

SUGGESTED CHECKLIST FOR APPLICATION

- Worker's Compensation Certificate
- Insurance Binder from Insurance Company made out to the Town of Grafton
- Photo Identification of Permit Holder
- Photo Identification of Person Performing Excavation
- Dig Safe Number
- All monies due to the town must be paid (Certificate of Good Standing)