

NOTICE OF PROBABLE VIOLATION (NPV) PROCESS & OPTIONS FOR PROCEEDING URGENTLY



JAMES A. BARRON
PAUL KWIATKOWSKI
CEAM SPRING 2022 CONFERENCE
HYATT REGENCY CHESAPEAKE BAY RESORT
CAMBRIDGE, MD
APRIL 14, 2022

BIOS

JIM

- EXECUTIVE DIRECTOR OF THE MD UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY ("THE AUTHORITY") SINCE 2012
- OVER 40 YEARS AS AN OWNER OF AN UNDERGROUND UTILITY CONSTRUCTION COMPANY; 30 YEARS IN UNDERGROUND DAMAGE PREVENTION
- 1ST CHAIR OF THE COMMON GROUND ALLIANCE (CGA); HALL OF FAME WINNER & NAMESAKE OF THE CGA'S "JIM BARRON AWARD"
- EXECUTIVE BOARDS OF NUCA AND AUC OF MD; MEMBER EMERITUS OF AUC OF MD
- NATIONAL AND MARYLAND "DITCH DIGGER OF THE YEAR" RECIPIENT
- GO RAVENS!!

PAUL

- APPOINTED IN 2020 TO THE MD UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY.
- CURRENTLY SERVES AS VICE CHAIRMAN OF THE AUTHORITY
- HOWARD COUNTY RIGHT-OF-WAY UTILITY PERMITS SUPERVISOR
- 17 YEARS EXPERIENCE IN INSPECTION, INCLUDING SUPERVISION
- OVER 45 YEARS EXPERIENCE IN UTILITY AND TRANSPORTATION CONSTRUCTION
- AVID FISHERMAN



TODAY'S OBJECTIVES

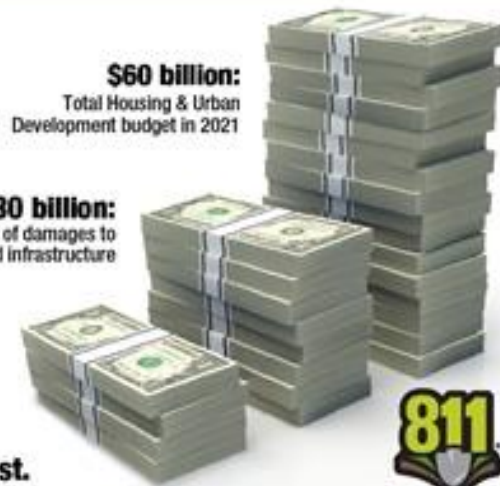
"NOTICE OF PROBABLE VIOLATION (NPV) PROCESS AND OPTIONS FOR PROCEEDING URGENTLY"

- MISS UTILITY LAW (811) TIMELINE
- THE NPV PROCESS
 - OVERVIEW
 - CASE STUDY
 - "START WORK" LEGISLATION
- EMERGENCIES:
 - DEFINITION
 - PENALTIES
- MISCELLANEOUS:
 - EXTENT OF WORK
 - FACILITY OWNERSHIP
 - DESIGNER TICKETS
 - CROSSBORES
 - DETECTABLE/LOCATABLE FACILITIES
- *..."TO PROTECT UNDERGROUND FACILITIES OF OWNERS IN THE STATE OF MARYLAND FROM DESTRUCTION, DAMAGE, OR DISLOCATION TO PREVENT - DEATH OR INJURY TO INDIVIDUALS; PROPERTY DAMAGE TO PRIVATE AND PUBLIC PROPERTY; AND THE LOSS OF SERVICES PROVIDED TO THE GENERAL PUBLIC."*
- 0.75 PDH

APRIL IS NATIONAL SAFE DIGGING MONTH

\$30 billion

That's the annual societal cost of damages to underground infrastructure. It's equal to half the Housing and Urban Development budget, and double the annual U.S. law enforcement operations budget.



Help lower the cost.
Contact 811 before you dig.

811beforeyoudig.com

The State of Maryland



Proclamation

From the Governor of the State of Maryland

NATIONAL SAFE DIGGING MONTH
APRIL 2022

WHEREAS, Thousands of times each year, the underground infrastructure in Maryland is damaged by those who do not have underground lines located prior to digging, resulting in service interruption, environmental damage, and threat to public safety; and

WHEREAS, Maryland's Underground Facilities Law provides guidelines for safe digging practices whenever a contractor performs excavations or demolitions, including the establishment of a "one call" Miss Utility notification system. This system is free to contractors and homeowners alike, and is vital in helping avoid disruption of service and ensuring the safety of the people of Maryland; and

WHEREAS, The Miss Utility Call Center provides a toll-free telephone number in order to promote public safety and help reduce damages to underground facilities, thereby reducing the loss of critical public services and the loss of time and money to contractors, underground facility operators, and taxpayers; and

WHEREAS, Damage prevention is a shared responsibility; by using safe digging practices, the excavators and homeowners of Maryland can save time and money and help keep our infrastructure safe and connected.

NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, do hereby proclaim APRIL 2022 as NATIONAL SAFE DIGGING MONTH in Maryland, and do commend this observance to all of our citizens.



Given Under My Hand and the Great Seal of the State of Maryland,
this 1st day of April,
Two Thousand and Twenty-two

Lawrence J. Hogan, Jr.
Governor

Robert L. W. ...
Lt. Governor

John C. ...
Secretary of State

EVOLUTION OF THE MD MISS UTILITY LAW

The 2006 Federal Pipes Act was passed by Congress requiring all states to establish pipeline safety oversight programs.

SB 811 passed by the MD legislature establishing the MD Underground Facilities Damage Prevention Authority.

A complete overhaul of the 2010 Miss Utility law was completed and passed by the MD Legislature and became law on March 11, 2021.

December
2006

2008

October
2010

2011-12

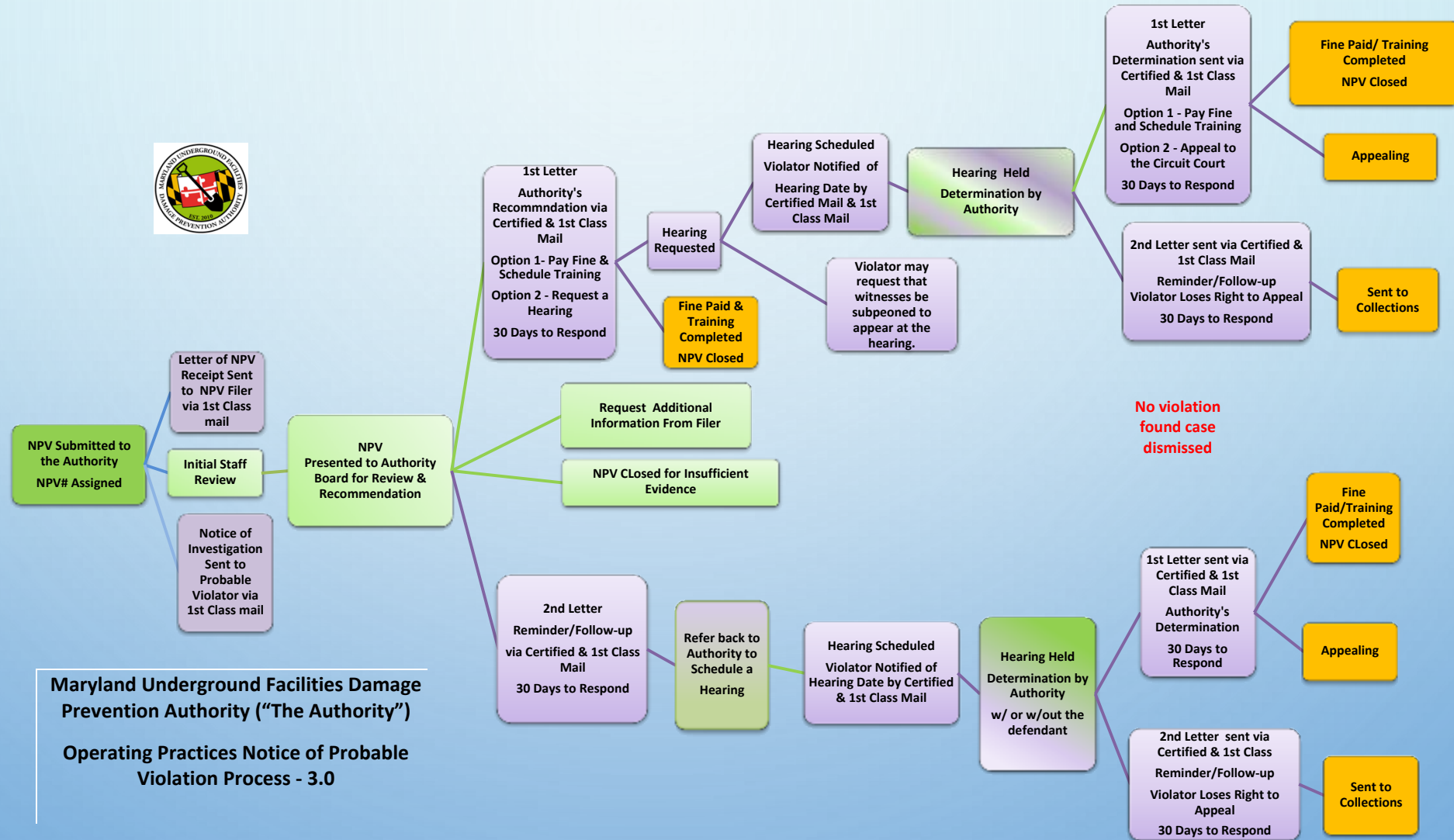
2021

The nationwide one-call system was established by the FCC. Now by just dialing 811 in your area you can reach your areas' one-call center to request marking.

A work group comprised of MD stakeholders began meeting in order to set the groundwork for the Authority. The Authority became operational in 2012.



THE NPV PROCESS...



THE NPV PROCESS

- VIOLATIONS CAN ONLY BE REPORTED VIA THE AUTHORITY'S WEBSITE AT: WWW.MDDPA.ORG. OR BY USING EITHER OF ITS MOBILE APPS (APPLE OR ANDROID). A FEE OF \$200 IS CHARGED TO HELP DEFRAY PROCESSING.
- AFTER AN INVESTIGATION OF THE NPV IT IS DECIDED WHETHER A VIOLATION OF SUBTITLE 1 OF TITLE 12 OF THE MARYLAND PUBLIC UTILITIES ARTICLE HAS OCCURRED
- THESE FINDINGS ARE THEN PRESENTED TO THE AUTHORITY MEMBERS FOR THEIR REVIEW AND DETERMINATION OF PENALTIES USING THE STANDARDIZED FINING MATRIX (SFM).
- IN THE 2016 MARYLAND COURT OF APPEALS RULING (*RELIABLE CONTRACTING V. MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY*) THE AUTHORITY WAS DIRECTED TO USE THREE FACTORS TO DETERMINE A FAIR AMOUNT OF CIVIL PENALTY:
 - A) SERIOUSNESS OF THE VIOLATION:
 - B) INTENT ("GOOD FAITH") OF THE VIOLATOR,
 - C) PAST-HISTORY OF VIOLATIONS.





DUE PROCESS

- IF THE AUTHORITY DETERMINES THAT A CIVIL PENALTY AND/OR TRAINING OR OTHER REQUIREMENT SHOULD BE IMPOSED AFTER THE REVIEW, THE AUTHORITY NOTIFIES THE PROBABLE VIOLATOR VIA RECOMMENDATION LETTER; WHICH MUST BE SENT BY CERTIFIED U. S. MAIL. TO INSURE RECEIPT OF THE FINDINGS.
- THE PROBABLE VIOLATOR HAS FORTY-FIVE DAYS TO CONTACT THE AUTHORITY FROM THE DATE OF THE RECOMMENDATION LETTER.
- THE VIOLATOR MAY THEN EITHER ACCEPT THE FINDINGS OF THE AUTHORITY AND PAY THE FINE, UNDERTAKE DAMAGE PREVENTION TRAINING OR ANY OTHER AUTHORITY REQUIREMENT;
- OR REQUEST A FORMAL HEARING BEFORE THE AUTHORITY.

CASE
"THE PERFECT



COVID-19

BUSINESS GOES VIRTUAL
WORKERS STAY HOME
SOME GET LAID OFF
SOME SEEK OTHER WORK

TICKET VOLUMES

MILD WINTER
LOW INTEREST RATES
CONSTRUCTION BOOM
LOCATOR SHORTAGE
MARKING DELAYS BEGIN

MANPOWER

FEDERAL COVID RELIEF ACT
WORKFORCE STAYS HOME
FEAR OF COVID LINGERS
A MAJOR LOCATOR LEAVES
TOO MANY TICKETS
TOO FEW LOCATORS



LEGISLATIVE RELIEF

- HOUSE BILL 994/SENATE BILL 789
- NOW ALLOWS A CONTRACTOR TO CHOOSE A START WORK DATE WHEN NOTIFYING THE ONE-CALL SYSTEM.
- ...”THE TICKET SHALL INCLUDE A RESPONSE DATE AND TIME FOR OWNER–MEMBERS OR THEIR CONTRACT LOCATORS THAT CORRESPONDS WITH THE START WORK DATE SELECTED BY THE PERSON WHO INITIATED THE TICKET.”
- ...”A TICKET IS VALID FOR 12 BUSINESS DAYS AFTER THE SELECTED START WORK DATE ON A TICKET THAT IS TRANSMITTED BY THE ONE–CALL SYSTEM TO AN OWNER–MEMBER OR THEIR CONTRACT LOCATOR.”
- THIS WILL CHANGE WILL GO INTO EFFECT ON JUNE 1, 2022

§12-121. EMERGENCY EXCAVATION

- “EMERGENCY” MEANS A SUDDEN OR UNEXPECTED OCCURRENCE INVOLVING A CLEAR AND IMMINENT DANGER DEMANDING IMMEDIATE ACTION TO PREVENT OR MITIGATE LOSS OF, OR INJURY TO, LIFE, HEALTH PROPERTY, OR AN ESSENTIAL PUBLIC SERVICE.”
- THIS SECTION APPLIES TO ANY ACTION TAKEN TO ADDRESS AN EMERGENCY FROM THE TIME THE EMERGENCY ARISES UNTIL A STANDARD TICKET IS INITIATED AND IS VALID UNDER §12-124 OF THIS SUBTITLE, INCLUDING ANY WORK ASSOCIATED WITH STOPPING OR MITIGATING THE “EMERGENCY”.

THE OWNER-MEMBER OR ITS CONTRACTOR LOCATOR SHALL...

- RESPOND TO AN EMERGENCY NOTICE AS SOON AS POSSIBLE BUT NOT LATER THAN 2 HOURS FROM THE TRANSMISSION OF THE TICKET FROM THE ONE-CALL CENTER AND INITIATE A DIALOGUE WITH THE TICKET REQUESTOR ON THE TIME OF ARRIVAL OR AN AGREED UPON TIME AND DATE.
- THE LOCATOR MUST BEGIN THE MARKING PROCESS WITHIN 3 HOURS AND THE CONTRACTOR MUST BE ON SITE OR ON THE WAY TO JOB SITE



CAUTION
ANY ABUSE OF THE
“EMERGENCY” TICKET IS
NOW SUBJECT TO A
\$4000 FINE AND UP TO
\$8000 FOR A REPEAT
VIOLATION...

MISCELLANEOUS

```
graph TD; A[MISCELLANEOUS] --> B[EXTENT OF WORK]; A --> C[FACILITY OWNERSHIP]; A --> D[DESIGNER TICKETS]; A --> E[DETECTABLE/LOCATABLE FACILITIES]; D --> F[CROSSBORES];
```

EXTENT OF WORK

FACILITY OWNERSHIP

DESIGNER TICKETS

DETECTABLE/LOCATABLE
FACILITIES

CROSSBORES



EXTENT OF WORK

§12-101(N) “EXTENT OF WORK”

MEANS A CLEAR AND CONCISE
DESCRIPTION OF WORK TO BE DONE AT
A PROPERTY,

INCLUDING THE PROPERTY ADDRESS OR
SPECIFIC DISTANCE AND DIRECTION
FROM A SPECIFIED POINT, NOT TO
EXCEED 1,320 FEET,

THAT COMPLETELY DEPICTS THE SCOPE
OF WORK

AND THAT THE EXCAVATOR CAN
COMPLETE WITHIN THE DESIGNATED LIFE
OF THE TICKET.

FACILITY OWNERSHIP

“...“OWNER” MEANS A PERSON THAT: OWNS OR OPERATES AN UNDERGROUND FACILITY; AND HAS THE RIGHT TO BURY AN UNDERGROUND FACILITY. “OWNER” INCLUDES: A PUBLIC UTILITY; TELECOMMUNICATIONS CORP.; CABLE TELEVISION CORP.; A POLITICAL SUBDIVISION; A MUNICIPAL CORP.; A STEAM HEATING CO.; AN AUTHORITY; AND A UNIT OF THE STATE...”

“...AN “OWNER-MEMBER” OR ITS CONTRACT LOCATOR SHALL MARK ITS UNDERGROUND FACILITY A PROPOSED EXCAVATION OR DEMOLITION THAT IS SPECIFIED IN THE EXTENT OF WORK CONTAINED IN THE TICKET...”

- DEVELOPMENT AGREEMENTS & TITLE XII?
- PRE-BUILDOUT?
- MAINTAINING MARKS?
- OWNERSHIP/TRANSFER?





§12-131 NON-EXCAVATION TICKETS FORMALLY DESIGNER TICKETS

- A PERSON MAY INITIATE A “NON-EXCAVATION” TICKET REQUEST BY NOTIFYING THE ONE-CALL SYSTEM SERVING THE GEOGRAPHIC AREA COVERING THE PLANNED PROJECT IF THE PROJECT MAY REQUIRE EXCAVATION OR DEMOLITION.
- MAY INITIATE ONLY ONE TICKET REQUEST FOR A SINGLE PROJECT.
- IN CONNECTION WITH A NON-EXCAVATION TICKET REQUEST, A PERSON MUST INDICATE THAT THE REQUEST IS FOR DESIGN PURPOSES ONLY AND MAY NOT BE USED FOR THE PURPOSE OF EXCAVATION OR DEMOLITION.
- THE ONE-CALL SYSTEM SHALL PROVIDE THE PERSON REQUESTING A NONEXCAVATION DESIGNER TICKET AN ACCURATE MEANS OF CONTACT FOR EACH UNDERGROUND FACILITY WITHIN 2 BUSINESS DAYS.
- EACH UNDERGROUND FACILITY OWNER SHALL MAINTAIN CURRENT VALID CONTACT INFORMATION WITH THE ONE-CALL SYSTEM FOR PERSONS TO CONTACT.



LOCATABLE/DETECTABLE

§12-104 (A-C) - NEW SECTION

A) THIS SECTION APPLIES TO: (1) COMPLETE REPLACEMENT OF AN EXISTING UNDERGROUND FACILITY; (2) UNDERGROUND STORM DRAIN SYSTEMS AND APPLICABLE DEVICES; AND (3) AN EXISTING PREVIOUSLY DETECTABLE UNDERGROUND FACILITY OR LOCATABLE UNDERGROUND FACILITY.

(B) EXCEPT AS OTHERWISE PROVIDED IN § 12-129 OF THIS SUBTITLE, ON OR AFTER OCTOBER 1, 2021, ALL NEWLY INSTALLED UNDERGROUND FACILITIES SHALL BE DETECTABLE OR LOCATABLE. (C) NOT LATER THAN OCTOBER 1, 2021, ANY PREVIOUSLY DETECTABLE UNDERGROUND FACILITY OR UNDERGROUND FACILITY MUST BE RESTORED TO BE DETECTABLE OR LOCATABLE.

§12-129 – TRACER WIRE ON PRIVATE PROPERTY

“...(A) SUBJECT TO SUBSECTION (C) OF THIS SECTION, ANY NEW OR REPLACEMENT PIPING THAT IS BURIED OR INSTALLED FOR THE PURPOSES OF CONNECTING A BUILDING TO A WATER SUPPLY SYSTEM, A SEWERAGE SYSTEM, AN UNDERGROUND STORM DRAIN SYSTEM, OR ANY OTHER APPLICABLE DEVICE SHALL BE BURIED OR INSTALLED WITH A WIRE OR AN EQUIVALENT PRODUCT OR TECHNOLOGY THAT MAKES THE PIPING DETECTABLE OR LOCATABLE. (B) ANY WIRE USED TO COMPLY WITH SUBSECTION (A) OF THIS SUBSECTION SHALL...”

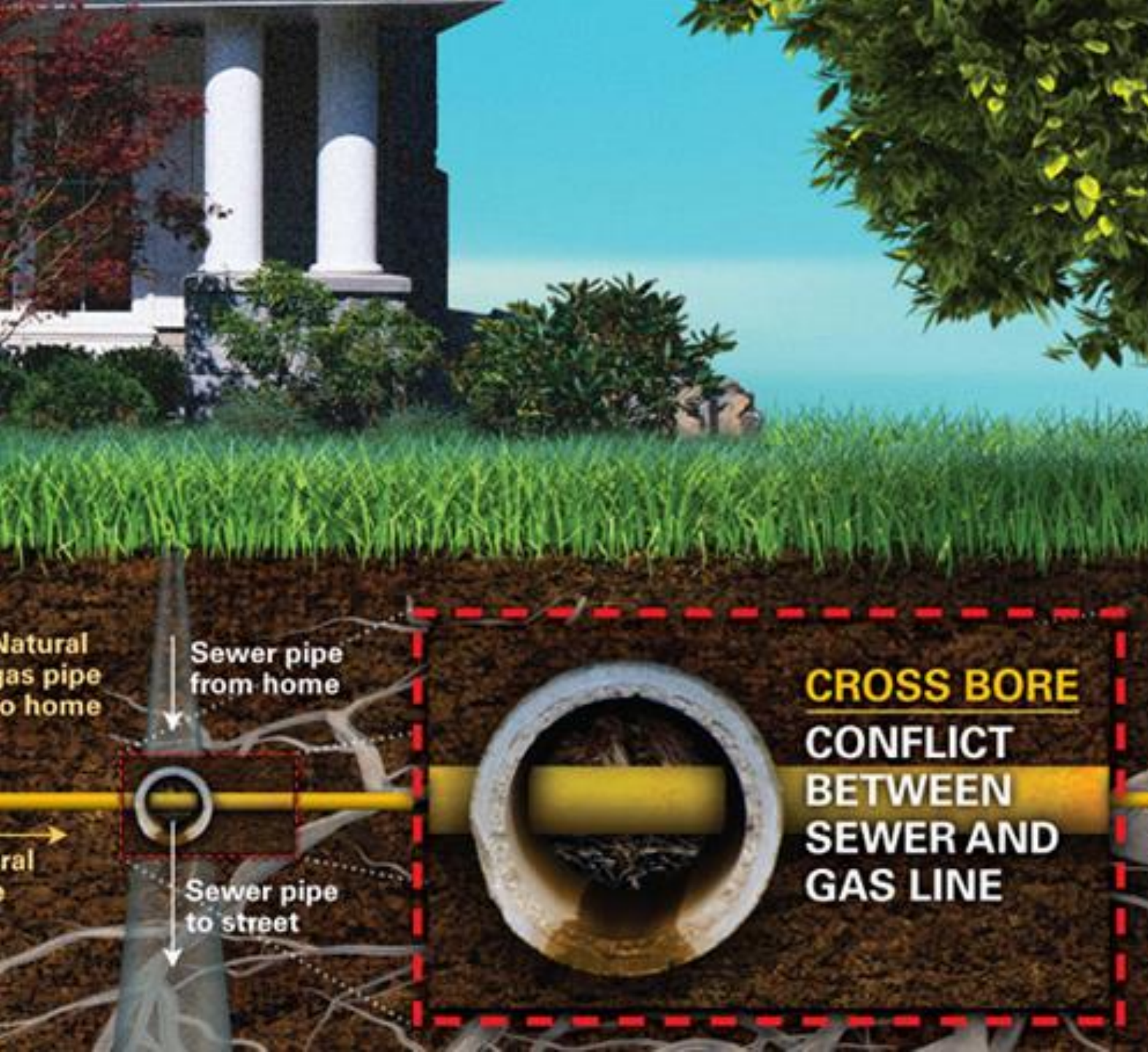
CROSSBORES

§ 12-101(F) “CROSS–BORE” - MEANS AN INTERSECTION OF AN EXISTING UNDERGROUND FACILITY BY A SECOND UNDERGROUND FACILITY RESULTING IN CONTACT BETWEEN THE TWO FACILITIES THAT RESULTS IN THE ORIGINAL FACILITY BEING DAMAGED, DISLOCATED, OR DISTURBED.

§12-131 - NONEXCAVATION TICKETS

(D) IN THE CASE OF AN OBSTRUCTION CAUSED BY A SUSPECTED CROSS–BORE: THE PERSON INTENDING TO REMOVE THE OBSTRUCTION SHALL NOTIFY THE ONE–CALL CENTER AND REQUEST A NONEXCAVATION TICKET FOR A SUSPECTED CROSS–BORE WHICH WILL BE TRANSMITTED TO ALL PERTINENT OWNER– MEMBERS IN THE GEOGRAPHIC AREA INDICATED FOR THAT TICKET; AND

(2) EACH OWNER–MEMBER SHALL TAKE WHATEVER ACTION IT CONSIDERS NECESSARY TO RESPOND TO THIS NOTIFICATION.



ADDITIONAL RESOURCES



WWW.MDDPA.ORG



JIM BARRON, EXECUTIVE DIRECTOR

MARYLAND AUTHORITY

(OFFICE) 410-782-2102 (CELL) 410-365-5182

JIM.BARRON@MDDPA.ORG

SUSAN STROUD, DEPUTY DIRECTOR

MARYLAND AUTHORITY

(OFFICE) 410-782-2103 (CELL) 443-250-6938

SUSAN.STROUD@MDDPA.ORG

SUSAN SULLIVAN, TRAINING & DPC COORDINATOR

MISS UTILITY

(OFFICE) 410-782-2030

SSULLIVAN@MISSUTILITY.NET

The background of the slide features a dense, overlapping pattern of interlocking gears. The gears are rendered in a light blue, semi-transparent style, creating a complex, mechanical texture. The word "QUESTIONS?" is centered over this background.

QUESTIONS?