

State of Rhode Island and Providence Plantations
Department of Administration
Division of Capital Asset Management & Maintenance
Rhode Island Contractors' Registration and Licensing Board

Public Notice of Proposed Rule-Making

Pursuant to the provisions of Title 5 Chapter 65 of the General Laws of Rhode Island as well as R.I.G.L. § 5-65.3-23 licensing authority, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Rhode Island Contractors' Registration and Licensing Board hereby gives notice of its intent to adopt new rules and regulations for the *Rhode Island Underground Utility Contractors Licensing Regulations and General Performance Guidelines*.

The purpose of this adoption is to establish provisions, qualifications and procedures for licensing underground utility contractors engaged in the laying, installing, altering, replacing or repairing of underground utilities and to promote the public health, welfare, and safety through the implementation of the Underground Utility Contractors' Licensing Law, R.I.G.L. §5-65.3-1 *et seq.* by providing a minimum and uniform standard for underground utility contractors.

The proposed rules, regulations and performance guidelines will be user friendly and will reflect the new statutory requirements for Underground Utility Contractors and are available for public inspection at www.crb.ri.gov, in person at one Capitol Hill, Providence, Rhode Island 02908, or requested by email ricrb@doa.ri.gov or by calling the Rhode Island Contractors' Registration and Licensing Board at 222-1268.

In the development of the proposed rules and regulations consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information. The implementation of the statute may have an economic impact on small businesses in that it will reduce the time and expense of obtaining multiple licenses from various cities/towns.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by **July 27, 2015** to the Rhode Island Contractors' Registration and Licensing Board, One Capitol Hill, Providence, Rhode Island 02908, ricrb@doa.ri.gov.

A public hearing to consider the proposed adoption shall be held on **July 27, 2015 at 12:30 PM at Conference Room A, One Capitol Hill, Providence, Rhode Island, 02908** at which time and place all persons interested therein will be heard. The place of the public hearing is accessible to the handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 222-1268 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

Date Notice was Posted: 06/25/2015

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**DEPARTMENT OF ADMINISTRATION
Division of Capital Asset Management & Maintenance
CONTRACTORS' REGISTRATION and LICENSING BOARD**



ADOPTION OF UNDERGROUND UTILITY CONTRACTORS' LICENSING RULES and REGULATIONS

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Rhode Island Contractors' Registration and Licensing Board Administrative Rules, Regulations for Underground Utility Contractors

DIVISION 1 ADMINISTRATION

1.1 PURPOSE, AUTHORITY AND SCOPE

The purpose of these rules and regulations is to establish provisions, qualifications and procedures for licensing underground utility contractors engaged in the laying, installing, altering, replacing or repairing of underground utilities and to promote the public health, welfare, and safety through the implementation of the Underground Utility Contractors' Licensing Law, R.I.G.L. § 5-65.3-1 *et seq.* by providing a minimum and uniform standard for underground utility contractors' to ensure they have the requisite skills, training, and experience necessary to conduct business in Rhode Island. The Underground Utility Contractors' Licensing Law requires every underground utility contractor who engages in the installation, repair, alteration or replacement of an underground utility as defined in R.I.G.L. § 5-65.3-2, be issued a license with the Contractors' Registration and Licensing Board. Any person who fails to acquire a license as stipulated is subject to penalties for operating without a license.

These rules and regulations are promulgated pursuant to Title 5, Chapter 5-65.3 and in accordance with Chapter 42-35, Administrative Procedures Act of the Rhode Island General Laws of 1956, as amended. Underground Utility Contractors' Licensing Law, R.I.G.L. § 5-65.3-1 *et seq.* may also be subject to certain provisions of the Contractors Registration Act, R.I.G.L. § 5-65-1 *et seq.*

If a person intends to conduct work outside of the scope of an underground utility contractor and within the scope of another trade, license, or registration, the person must first obtain the proper license or registration. Failure to obtain the proper license or registration and conducting that scope of work under an underground utility contractor license may result in fines.

1.2 NOTICE OF PROPOSED REGULATION

Before adopting, amending, or repealing any rule, the Board shall give notice of the proposed adoption, amendment, or repeal as required by the Administrative Procedures Act, Rhode Island General Laws Chapter 42-35.

1.3 TEMPORARY REGULATION

The Executive Director may adopt, amend, or suspend a regulation as provided in Administrative Procedures Act, R.I.G.L. Chapter 42-35.

In the event of a catastrophic event or imminent peril, the Board may waive certain requirements of these Rules and Regulations, or delay certain aspects.

1.4 GENERAL PROCEDURES

The Board adopts the Administrative Procedures Act, R.I.G.L. Chapter 42-35 as the procedures to be utilized for administrative hearings of the Board or administrative hearing officers.

1.4.1 Delivery of Notices

Time for response to all notices delivered by the Board shall run from the date of mailing from the Board, utilizing calendar days.

The underground utility contractor is responsible for notifying the Board of any change of address while licensed and for one year following the date the license expires or otherwise becomes inactive. The licensee must notify the Board of the change of address in writing and within ten (10) days of the date upon which the change of address occurs. Proposed orders, final orders, notices of hearings or other notices mailed by the Board to the last known address of record are considered delivered when deposited in the mail.

1.4.2 Information Requests

A complaint/claim filed with the Board will initially be classified under investigation and any information in regard to this complaint/claim will not be provided by telephone inquiries or written request until such time as an investigator has had the opportunity to review the matter filed. Upon investigation and a determination that the complaint/claim is valid, information provided will be deemed public record. Once the complaint/claim is sent to an administrative hearing or a final notice is issued, the information of the claim's status will be posted electronically and will remain on the underground utility contractor's record. A claim adjudicated in favor of the underground utility contractor shall be removed from his/her record as soon as practicable or as consistent with Rhode Island General Law and at such point will no longer be available for information request.

1. The Board will provide the following information in response to written, telephone, or e-mail requests for license information relating to a specific person:
 - a) Whether or not the person is or has ever been licensed;
 - b) The license number(s);
 - c) The business names used by the entity of record with the Board;
 - d) Type of business organization (i.e. individual proprietorship, partnership, LLC, corporation or joint venture);
 - e) Personal names of owners, partners, or corporate officers;
 - f) Last known address of person;
 - g) Expiration date or date upon which the license became inactive and the reason it became inactive;
 - h) The date the person first became licensed;
 - i) Status of the license, validity of insurance and/or bond, an insurance company or bond company name (as provided to the Board by the insured); and
 - j) Number, status, type, date filed, and alleged amount of fines of proposed orders, final orders, claims, violations, or notices of hearings on record.
2. The Board shall provide certification of license relating to a specific entity upon written request and payment of required fee. This certification will include the following information:
 - a) License number(s);
 - b) Name of licensed person and any business name(s) on file with the Board;
 - c) Type of business (i.e., individual proprietorship, partnership, LLC, corporation or

- joint venture);
 - d) Names of owner(s), partner(s), or corporate officer(s) provided to the Board; and
 - e) The important dates and actions in the license history.
3. If more information is required than that listed in Section (1) or (2) of this provision, the request for information should be made in writing or by e-mail to the Board.
 4. Access to Public Records requests to the Board will be processed in accordance with the Access to Public Records Act, R.I.G.L. § 38-2-1 *et seq.*
 5. If no complaints/claims/violations have been recorded or if it appears to the Board that the person about whom the inquiry is being made is unlicensed, the caller will be given this information by telephone.

1.4.3 Filing Fees and Record Changes

1. The Board may impose the following charges for records and filing fees:
 - a) A \$10.00 fee for each certification that an entity has or has not been licensed with the Board.
 - b) A \$10.00 fee for certified copies of documents.
 - c) A \$5.00 fee for every 35 copies made, or 15 cents (\$0.15) per copied page of written documents copyable on common business or legal size paper (or costs as otherwise provided under R.I.G.L. § 38-2-4).
 - d) A \$35.00 fee per recording of hearing officer and Board administrative hearings.
 - e) A \$100.00 fee for a paper copy or electronically provided list of licensees. Requesting parties shall bear the cost of mailing. (Lists will be provided free of charge to city and state building departments).
 - f) A \$200.00 fee for each initial license application and renewal application. An additional \$50 pre-license application fee for new applicants. The license or renewal fee shall be retained when an applicant fails to complete the license or renewal process within ninety (90) days of the date the application was received by the Board.
 - g) A \$10.00 fee for a digitized photograph taken by the Board for a license card.
 - h) A \$25.00 filing fee shall be imposed for any complaint/claim filed with the Board (state/municipalities will not be required to pay a fee for filing a complaint).
 - i) A \$20.00 fee for any filing of exceptions to the Board (“Administrative Board Appeal”).
 - j) A \$25.00 fee for each replacement license card and lost card affidavit.
 - k) A \$20.00 fee for any additional license card for employees, officers, or partners (for purposes of pulling permits, license verification, or identification – *see* Section 3.5).
 - l) A \$25.00 fee to change the responsible person on a license.
 - m) A \$25.00 fee to change the ownership of a license.
 - n) A \$25.00 fee to change the name of the licensee or company.
 - o) No fee will be charged for Board action on a license number or on an appeal in this regard.

- p) No fee shall be charged for address changes on the record. The licensee is responsible for notifying the Board of any change of address while licensed and for one year following the date the license expires or otherwise becomes inactive. The licensee must notify the Board of the change of address in writing and within ten (10) days of the date upon which the change of address occurs. Proposed orders, final orders, notices of hearings, or other notices mailed by the Board to the last known address of record are considered delivered when deposited in the mail.
- q) The Board shall not refund fees or civil penalties, unless an administrative error occurred.

1.5 RULES OF PROCEDURE FOR BOARD MEETINGS

The Board adopts the following rules of procedure for its meetings, consistent with R.I.G.L. § 5-65-1 *et seq.*, § 5-65.3-1 *et seq.*, and with the Rules and Regulations related to the Contractors' Registration Act:

1.5.1 Quorum and Chair Appointment / Election

A quorum must be present for the Board to be called to order and to make decisions. A quorum shall be a majority of the Board members required pursuant to R.I.G.L. §§ 5-65-14 and 5-65-15(b). A majority of affirmative votes among the members present are required for any official action or decision of the Board. Except in cases where a member's vote would result in a prejudiced, biased, or unfair decision or action, no member shall abstain from voting.

The Board shall elect or reaffirm the chair and vice-chair every two years in the odd years at the first meeting of the year, or as necessary upon vacancy and they shall serve no more than two (2) consecutive two-year terms in that post.

The chair shall exercise all the rights and duties of other members, including the right to introduce motions and proposals and to speak and vote on them while presiding. In the absence of the chair or vice-chair, the Executive Director shall appoint a Board member designee to chair the meeting.

1.5.2 Action under Board Authority

No member of the Board shall speak or act on behalf of the Board without specific authorization by law or by the Board. The Board shall not delegate its statutory rule making authority, except to an officer or employee within the Board who shall be authorized by the Board to adopt temporary regulations pursuant to the A.P.A., R.I.G.L. § 42-35-3(5)(b).

1.5.3 Notice of Board Meetings

In accordance with applicable governing statutes, including R.I.G.L. § 42-46-1 *et seq.*, the chair or Executive Director shall establish the time, date, and place for the Board to convene. Notice of all meetings, appeals, hearings, and matters requiring notice shall be given to the members of the Board and all interested parties.

1.5.4 Board Meeting Agenda

The chair shall work with the Board's Executive Director to determine the substance of the agenda for each meeting. The order of business shall be:

1. Pledge of Allegiance;
2. Call to order;
3. Approval of agenda and order of business;
4. Approval of minutes of previous meetings;
5. Review of pending issues with Code Officials from the Rhode Island Building Officials Association;
6. Legal Report;
7. Consideration of motions;
8. Consideration of cases on appeal and oral argument;
9. Consideration of requests for expungement;
10. Education;
11. Report of Executive Director and staff;
12. Old Business;
13. New Business;
14. Public comment;
15. Announcements;
16. Adjournment.

1.5.5 Public Comment

Members of the public wishing to testify before the Board at public meetings on issues relevant to its business may be asked to sign in to address the Board.

1.5.6 Conduct During Meetings

If any person engages in disruptive conduct at a meeting, such conduct shall be grounds for the chair to expel the person from the meeting.

1.6 ETHICS POLICY

The Board is subject to the ethics policy as established by Title 36, Chapter 14 of the Rhode Island General Laws.

1.7 RECORD RETENTION SCHEDULE AND DESTRUCTION OF RECORDS

The Board maintains a record retention/destruction of records schedule with the Office of Secretary of State/State Archives Division and in accordance with Rhode Island General Laws.

DIVISION 2 DEFINITIONS

2.1 DEFINITIONS AS USED IN THESE REGULATIONS

Agent of Service (or registered agent): a business or individual designated by the contractor/licensee upon whom any process, notice, or demand required or permitted by law to be served upon the corporation or individual licensee may be served. An attorney licensed and located in Rhode Island or a company listed by the Rhode Island Secretary of State may serve as an agent of service.

Applicant: any person seeking to obtain an underground utility contractor's license under R.I.G.L. Chapter 5-65.3.

Appurtenance: any accessory improvement to real estate associated with a primary structure.

Backfilling: using earth, soil, or other material to replace previously excavated material to fill a trench and to protect and support the pipe; backfill material should be free from debris, cinders, frozen materials, ashes, refuse, boulders, rocks, or organic materials.

Backflow: when water, drainage, wastewater, or sewage flows through a pipe in the reverse direction that the system designer intended.

Backflow Prevention Valve: a device or valve installed in a building, structure, drain or sewer pipe that is subject to backflow, and that prevents water, drainage, wastewater, or sewage from backing up into a lower level or fixture and causing a flooding condition. The backflow prevention valve automatically senses a reverse flow (either water or sewage flowing in the wrong direction) in a pipe and completely closes the line when the condition occurs. Also known as a "backwater valve."

Bacterial Testing: testing of installed pipes for bacteria through accepted bacterial testing methods.

Bedding Material (Pipe Bedding): the soil, gravel, sand, or other material on which a pipe is supported.

Board: the members appointed to the Contractors' Registration and Licensing Board ("CRLB" or "Board") as established by statute and the staff supporting the Board.

Brass Cap: the cap or cover that seals the clean out.

Building Officials: the officials charged with administration and enforcement of the Rhode Island State Building Code.

Building Sewer: That part of the drainage system that extends five feet (5') from the outer wall of the building or structure and conveys the discharge to public sewer, private sewer, individual sewage disposal system or point of disposal as defined in state building code.

Catch Basin: a receptacle located at the point where a street gutter discharges and designed to collect runoff.

Check Valve: a two-port valve that has two openings in the body, one for liquid to enter and the other for liquid to leave.

Cistern: a tank for the reception of rain water from a roof.

Claim: a matter to be investigated by the Board for which a statement of claim form has been filed by a person who has a direct contractual relationship with the licensed Underground Utility Contractor or one who is required to be licensed.

Claimant: a person who files a claim against a licensed Underground Utility Contractor or one who is required to be licensed and who has a direct contractual relationship with that contractor.

Clean Out: an access opening in the drainage system utilized for the removal of obstructions.

Commission: the Building Code Commission supportive of the Contractors' Registration and Licensing Board and the CRLB staff.

Community water supply: means any public water supply which served at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents. Duals daily at least sixty (60) days out of the year.

Complaint: any information or allegation received by the Board in writing (on a proper complaint form as prescribed by the Board) from any person, organization, agent, Board staff, or member of the Board that alleges misconduct by a licensed underground utility contractor or person required to be licensed hereunder.

Complainant: any person, organization, agent, Board staff, or member of the Board who files a complaint against an underground utility contractor (or person required to be licensed by the Board).

Contract: the written agreement between the client and the underground utility contractor spelling out the responsibilities and duties of each party and the fee to be paid. All contracts in excess of \$1,000.00 must be in writing.

Dewatering: action of removing groundwater or surface water from a construction site.

Dishonest or fraudulent conduct injurious to the welfare of the public: as used in R.I.G.L. § 5-65.3-12 and § 5-65-10(3) includes, but is not limited to, the following:

1. Acting in a manner that, because of a wrongful or fraudulent act by the applicant, registrant, or licensee has resulted in injury or damage to another person; or
2. Failing to pay monies when due for materials or services rendered in connection with the applicant's, registrant's, or licensee's operations when the applicant, registrant, or licensee has received sufficient funds as payment for the particular construction work project or operation for which the services or materials were rendered or purchased; or
3. Accepting payment in advance on a contract or agreement and failing to perform work or provide services required by the contract or agreement and failing to return the payment; or
4. Giving false, misleading or deceptive advertising whereby a reasonable person could be misled or injured; or
5. Using a revoked, invalid, or suspended registration or license; or
6. Working using another person's registration or license.

Disinfection: removal of bacteria, contaminants, or deleterious matter from the potable water lines by accepted methods.

Distribution Main: pipe for the transmission or conveyance of potable water to more than one structure.

Drain (Building Drain): the part of the lowest piping of a drainage system that receives the discharge from soil, waste and other drainage pipes inside and that extends beyond the walls of the building and conveys the drainage from the building; any pipe that carries water in a building or structure drainage system.

Duplex Pumps: two pumps that alternate the pumping process, at higher flow rate due to its not having a dead spot in the pump stroke. As one pump is completing its stroke cycle, the other is beginning its stroke, maintaining maximum pumping action without a break in the cycle.

Employee: any person permitted to work by an employer, who receives wages, except that independent contractors or subcontractors shall not be considered employees. Anyone who performs services for an employer is an employee if the employer can control what will be done and how it will be done. An employee is generally subject to the business's/employer's instructions about when, where and how to work (i.e., instructions about how to do work, such as; when and where to do the work; what tools or equipment to use; what workers to hire or to assist with the work; where to purchase supplies and services; what work must be performed by a specific individual; and what order or sequence to follow when performing work. Documents such as W-2's, payroll taxes, and IRS forms may be requested by the Board to substantiate an employee's status.

Employer: any individual, firm, partnership, corporation, limited liability corporation, association, joint venture, trust, receiver, or other like officer appointed by a court of this state, and any agent or officer of any of the above mentioned, employing any person in this state. An employer with one or more employees is required to have proper workers' compensation coverage or waiver thereof.

Engineering Services: Engineering license required. Any professional service or creative work requiring engineering education, training, and experience; and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with the specifications and design, in conjunction with structures, buildings, machines, equipment, works, or processes.

Excavate: to remove earth, soil, rock or other materials from a site, typically with the use of heavy earthmoving machinery.

Executive Director: means the Executive Director of the Contractors' Registration and Licensing Board.

Force Service Main: a pressurized main pipe that can carry water and other materials.

Force Sewer Main: a pressurized sewer pipe that can carry sewage and other materials. Force sewer mains are necessary when gravity flow is not sufficient to move sewage through a gravity line. Force sewer mains move sewage or wastewater under pressure by using pumps or compressors located in lift stations.

Good Standing: an applicant who seeks to obtain an underground utility contractor’s license must not have any pending unresolved claims, violations, penalties, or fines with the Board for any license or registration held by the applicant, or with any other licensing agency in Rhode Island or out of state.

“Hot” Box: an above ground enclosure that protects the backflow assembly and water meter from inclement weather conditions.

Inactive License: a license that has lapsed, expired, or has been suspended or invalidated.

Incapacity (Incapacitated): Death of, or injury that renders an active licensed underground utility contractor unable to perform underground utility work as a result of the physical loss of function or impairment of a body part or parts, or debilitating pain.

Individual Private Water Systems: This type of system is designed to supply property owner(s) and/or one tenant of record with potable water for consumption and use.

Installed: attached or connected such that the installed item requires tools for removal.

Invert: the bottom on the inside of a pipe.

Lateral: service line from the sewer main or force main to the property line or curb line.

Licensee: any person who has obtained from the Board an underground utility contractors’ license pursuant to R.I.G.L. § 5-65.3-1 *et seq.*

Lift Station: a structure that houses pump systems.

Manhole: an underground structure designed for maintenance use.

Master Meter: the primary device for measuring water use.

Municipality (Municipal Authority): the appropriate state or local city or town authority involved in the day-to-day inspection of underground utility work or sewer and drain installations; the municipalities assist the Board in enforcement of R.I.G.L. Ch. 5-65.3 and shall have the authority to demand the production of a license by an underground utility contractor, as well as investigate and, where appropriate, make complaints to the Board regarding underground utility contractor work or violations. *See* R.I.G.L. § 5-65.3-18.

Nature and complexity: includes, but is not limited to the following meanings:

1. Involves issues requiring legal interpretation of statutes in addition to R.I.G.L. Chapters 5-65, 5-65.1, 5-65.2, 5-65.3, 5-73 (i.e. contract law, corporate law, etc.); or
2. In the interest of fairness and equity, requires rulings on persons or entities outside the jurisdiction of the Board; or
3. Is outside the expertise of the Board.

Occupancy: may occur at, but not be limited to, the time of issuance of a certificate of occupancy or the time of receipt of a letter of completion of the construction by the Building Official.

Onsite Wastewater Treatment System: means any system of piping, tanks, dispersal areas, alternative toilets or other facilities designed to function as a unit to convey, store, treat or disperse wastewater by means other than discharge into a public wastewater system.

Onsite Wastewater Treatment System (OWTS) License: a license obtained under R.I.G.L. Ch. 5-56 and granted by the Department of Environmental Management for installing, constructing, altering, repairing or causing to be installed, constructed, altered, or repaired any individual sewage disposal system.

Owner: any person or his/her agent who holds the title or other rights of property.

Perched Ground Water: ground water held above the regional or main water table by a less permeable underlying earth or rock material.

Person: a self-employed individual, a partnership, limited liability company, corporation or joint venture.

Permits: documentation that must be obtained prior to the commencement of work, from the local or State Building departments of each city/ town in which work is to be performed.

Pipe (Water Service): the pipe from the water main or other source of potable water supply, or from the meter when the meter is at the public right of way, to the water distribution system of the building served.

“Plans and Specifications”: construction and/or engineering plans, including system site plans, storm drain plans and profiles, cross sections, detailed drawings, etc., or reproduction thereof, showing the location, character, dimensions, and details for the work proposed, and approved or to be approved by the owner, engineer, municipality, or architect. When approved, such plans become a supplement to these Rules and Regulations and the underground utility contractor must perform work in accord with said plans.

Potable Water: means water that is fit or suitable to drink; water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the bacteriological and chemical quality requirements of the Department of Public Health or regulations of the public authority having jurisdiction.

Pressure Testing (Air): testing of a pipe by air pressurization.

Pressure Testing (Hydrostatic): pressurized testing of a pipe filled with water.

Pump Station: see Lift Station.

Pursuit of an independent business (Independent Contractor): evidence of operating as an independent contractor and not as an employee may include, but not be limited to the following criteria:

1. The person is free from close supervision by the homeowner or contractor over the details of the work being performed, including hours of work;
2. The person enters into a contract, either oral or written, which calls for the completion of certain work on a specific project or job site for which payment is made on a per-hour, time-and materials, barter, or entire job basis;
3. The person may have one or more effective contracts at any one time;

4. The person hires and supervises other subcontractors and/or employees and may be responsible for business insurance and payroll taxes if help is hired;
5. The person enters into a contract, either oral or written, which does not require the employer to consider remuneration paid to be wages for the purposes of unemployment compensation benefits, workers' compensation payments, or federal or state withholding;
6. The person uses as normal business practice telephone services, business cards, or any form of advertising;
7. The person furnishes substantially all of the equipment, tools, and supplies necessary to carry out contractual obligations.
8. The person is not an independent contractor if he/she performs services that can be controlled by an employer (what will be done and how it will be done).
9. Documents such as 1099's, taxes and IRS forms may be requested by the Board to substantiate an independent contractor's status, and the Board may also consider IRS definitions and criteria in determining the independent contractor's status.

Multi-Family Residential Systems: means supply systems that serve three (3) or more residential dwelling units.

Residential Building: a structure consisting of one or more residences and their appurtenances.

Respondent: the person against whom an enforcement action is taken or against whom a complaint is made.

Revoke: the termination of an underground utility license.

Sanitary Sewage: any liquid or solid waste containing animal or vegetable matter in suspension or solution, or the water-carried wastes that originate from sanitary conveniences of a structure, including water closets, urinals, laundry tubs, washing machines, sinks, dishwashers or any other source of water-carried waste of human origin or containing putrescible material.

Sanitary Sewer: a pipe which carries sanitary sewage and to which storm, surface, and groundwater waters are not intentionally admitted.

Service Line: a pipe for the transmission or conveyance of potable water under pressure either from an individual well or from a distribution main, to a building or structure.

Sewer: the part of the waste system that extends from the end of the building sewer and conveys the discharge to a public sewer, private sewer, individual sewage disposal system or other point of disposal.

Storm Drain: means any pipe or structure designed to collect, carry, and divert surface water runoff.

Structure: (1) any residential or commercial building; or (2) any building containing one or more residences and their appurtenances. Structure may also include modular and mobile homes, which come within the jurisdiction of the Board as structures at the time they are placed on support blocking or permanent foundations in the place they will be used.

Subcontractor: a person or entity who has a contract, either oral or written, with an underground utility contractor but not with the owner of the structure to perform work subject to R.I.G.L. Chapter 5-65.3, and who is responsible for a specific portion of the project. Although a contract may state the worker is a subcontractor, this is not necessarily sufficient to determine the worker's status. The Board may consider how the parties work together to determine whether the worker is a subcontractor or otherwise.

Subsurface Sewage Disposal System: a system, other than a public or community system, which receives sewage. Included within the scope of this definition are: septic tank absorption systems, privies, chemical toilets, and other similar systems.

Sump: area between the invert of a pipe and the bottom of a catch basin structure.

Top Hat: cast iron frame and cover for protection of the clean out.

Underground utility: the installation, repair, alteration, or replacement of underground utilities, sewer lines, storm drainage lines or water lines, water service and laterals, laying drains and related services outside of buildings, making connections with public and/or private underground utilities, provided that such work is to be done between the main, lateral, related services and/or appurtenances to within five feet (5') of the outer wall of a building or structure and specifically excluding gas and telecommunications work and any work defined in § 28-27-28.

Underground Utility Contractor: any corporation, association, sole proprietorship, firm, partnership, limited liability corporation, limited liability partnership, or other business organization that is engaged in the installation, repair, alteration, or replacement of underground utilities, outside of buildings, making connections with public and/or private underground utilities provided that such work is to be done between the main, laterals, services and/or appurtenances to within five feet (5') of the outer walls of a building or structure. The term "underground utility contractor" shall include any agent, servant, and/or employee of a licensed underground utility contractor. The term "underground utility contractor" does not include individuals licensed under chapter 20 of this title entitled "Plumbers and Irrigators."

An underground utility contractor is a person who has a contract, either oral or written, with the property owner to perform work subject to Chapter 5-65.3; who may engage one or more subcontractors to perform all or part of the work; and who may have responsibility for the entire project which is the subject of the contract.

Vacuum Testing: testing of a sewer manhole by suction.

Violation: an infraction of the relevant statutes, rules, standards, orders, license, compliance schedule, or any part thereof and includes both acts and omissions

Water Supply System: means and includes any apparatus, equipment, water service pipes, water distribution pipes, and the necessary connecting pipes, control valves, and all appurtenances adjacent to the structure or premises, including the supply of water to the main water distribution line, geo-thermal, and all other water needs that require storage, pumping, treatment, filtration, or alteration in any way.

Work Period: the time period from the date a contract is entered into until the date the contracted work is substantially completed by the original underground utility contractor, or if not substantially completed, the date work by the original underground utility contractor ceased.

DIVISION 3 LICENSING

3.1 LICENSING GENERALLY

The following licensing requirements pertain to the licensing of underground utility contractors pursuant to R.I.G.L. § 5-65.3-1 *et seq.* Licensing requirements for other disciplines are contained in the respective Rules and Regulations.

3.1.1 License Required

An underground utility contractor's license shall be required for commercial and residential work as established by law, and may be issued by the Board, by a Board approved third party, or online. A license will be issued to only one person, as defined herein. Other persons shall not be included in that license, but each shall be separately licensed and shall separately meet the underground utility contractor licensing requirements. Each applicant for an underground utility contractor's license must also be of good moral character and be in good standing with the Contractors' Registration and Licensing Board. No entity or person may perform work subject to R.I.G.L. Chapter 5-65.3 without a license or through the use of another person's license; such actions will result in fines as set forth in Section 5.3.

3.1.2 Corporate License

Any corporation, LLC or partnership may obtain a license. The applicant must identify a principal responsible on the application. The principal responsible is the individual corporate member or partner who will be responsible for all actions taken by all individuals employed by the corporation/partnership/LLC and for any violations of the statute that occur under that license. The principal responsible is required to take and pass the required written examination, obtain the required insurance and bonding requirements, and satisfy all other qualifications and requirements for licensure. If any one of the partners or members of the corporation are no longer part of the corporation/partnership, another member/partner/ officer must become licensed under § 5-65.3-1 *et seq.*

3.1.3 Public Utility Exemption to License Requirement and Plumber/Pipefitter Alternate License Requirement

- a) **Public Utility Exemption:** Any public utility, or agent thereof, regulated by the public utilities commission or the division of public utilities and carriers shall be exempt from underground utility contractor licensing requirements per R.I.G.L. § 5-65.3-3(c).
- b) **Plumbers/Pipefitters Alternate License Requirement:** any person licensed as a master plumber (Ch. 5-20) or as a master pipefitter (Ch. 28-27) shall be exempt from the requirement to obtain *both* an underground utility contractor's license under Ch. 5-65.3 and an installer's license under Ch. 5-56 provided that such master plumber or master pipefitter shall be required to comply with the provisions of R.I.G.L. § 5-65.3-3 and § 5-56-7. If a master plumber or master pipefitter intends to conduct underground utility contracting work and does not possess a valid installer's license under Ch. 5-56, the master plumber or pipefitter must obtain an underground utility contractor's license as provided by Ch. 5-65.3 and these Rules and Regulations.

3.1.4 Change of Entity Type / Ownership – License Termination

Underground utility contractor licenses are not transferable or assignable; the license becomes automatically invalid upon a change of ownership, or on suspension/revocation of license. R.I.G.L. § 5-65.3-11. If a person licensed as an individual, partnership, limited liability company or corporation seeks to change to another type of entity, the license will be terminated and the new entity must license anew. If a person requests to maintain the same license number for the new entity, the Board may assign that number to the new entity once a form established by the Board is completed. The responsibility for all work performed by the previous entity over the last year will be assumed by the new entity.

3.1.5 Partners Must Be on Record with the Board

All partners within a partnership shall be on record with the Board. Partnerships consisting of spouses shall be treated as are partnerships consisting of unrelated persons. Notification must be made to the Board for any change in the composition of that partnership; except for the reallocation of interest among the existing partners.

3.1.6 Cannot Advertise or Work Without Valid License

No person shall advertise or otherwise hold out to the public that person's services as an underground utility contractor unless that person holds a current, valid license; nor shall any person claim by advertising or by any other means to be licensed unless that person holds a current, valid license.

3.1.7 Advertising, Proposals, Contracts and Invoices Must Contain License Number

- a) All forms of advertising, inclusive of newsprint classified advertising, newsprint display advertising, pamphlets, telephone directory space ads, online ads, and display ads for work subject to R.I.G.L. Chapter 5-65.3, prepared by an underground utility contractor or at the underground utility contractor's request or direction, shall clearly show/display the underground utility contractor's license number.
- b) All written contracts and proposals subject to R.I.G.L. Chapter 5-65.3 shall show the underground utility contractor's license number. All contracts exceeding \$1,000.00 must be in writing and failure to adhere to this will result in the assessment of fines (*see* Section 5.3).

3.1.8 Change of Licensee Information

A licensee must provide the Board with any changes to the information contained in the application and license, such as change of address, change of responsible party, agent of service, etc. and failure to do so will result in fines and possible suspension of license. Forms for making such changes are available on the Board's website: www.crb.ri.gov. (Change of Address Form, Change of Responsible Person Form, Change of Ownership and Company Name Change Form).

3.1.9 Effect on Corporate License if Licensee/Principal Responsible Suffers Death or Incapacity

In the event that a corporate licensee/principal responsible dies or is incapacitated by illness or injury so as not to be able to perform the work of an underground utility contractor, the Board or its Executive Director may issue, upon application and evidence of death (death certificate) or

incapacitation (doctors note), a provisional license to one of the top four (4) corporate officers, to a partner, or to a designated corporate officer until either:

- a) The new potential principal responsible takes the written licensing examination within 120 days; or
- b) The new potential principal responsible provides evidence to the Board that he/she can perform the work of an underground utility contractor. Evidence may include, but is not limited to: prior work history (to include dates of work performed, who the work was for, what work was performed); OWTS license; other licenses held; references from engineers, plumbers, or prior licensed employers; license card demonstrating that the potential new principal responsible is a member of the corporation or business entity.

Once the Board receives the application, the evidence that the licensee/principal responsible is deceased or incapacitated, and the evidence that the new potential principal responsible has fulfilled a) or b) above, the Board will determine if the license may be issued.

3.2 APPLICATIONS FOR UNDERGROUND UTILITY CONTRACTOR LICENSE

3.2.1 New Applicants

In order to obtain an underground utility contractor's license, a new applicant must be in good standing and must submit to the Contractors' Registration and Licensing Board the following:

- a) **Pre-License Application:** If applicant has never previously applied for or held an underground utility contractor's license, the applicant must submit a pre-license application in addition to the application below. The purpose of the pre-license application is to process the applicant for testing through the Board's third-party testing provider and to issue a tracking number for the license. The pre-license application shall include:
 - i. Name of Applicant;
 - ii. Address;
 - iii. Driver's license state and number;
 - iv. Date of Birth;
 - v. Home, business and cell phone number(s);
 - vi. e-mail address (if applicable)
 - vii. \$50.00 pre-licensing application fee.
- b) **Application:** The application on the proper form as prescribed by the Board must include the following:
 - i. Name;
 - ii. Home address;
 - iii. Driver's license state and number;
 - iv. Date of birth;
 - v. e-mail address (if applicable);
 - vi. Home, business and cell phone number(s);
 - vii. Business name (list all business names under which business as an underground utility contractor is to be conducted, inclusive of fictitious names);

- viii. Name of principal responsible;
 - ix. Business address;
 - x. If non-resident underground utility contractor, must provide name, contact information and signature of a registered agent in Rhode Island;
 - xi. A true and accurate 1" x 1" photograph of applicant or a digitized photograph taken by the Board for an additional fee of \$10.00
 - xii. \$200.00 application/licensing fee for a two year period.
- c) **Hoisting License or other similar evidence:** The applicant must also provide a current Department of Labor and Training Hoisting Engineers License (R.I.G.L. Ch. 28-26) or other similar license or certification as evidence that the underground utility contractor is capable of installing, repairing, alternating, or replacing sewer lines, storm drainage lines or waterlines, and services in accordance with approved plans and specifications pursuant to R.I.G.L. § 5-65.3-4(1). Other similar evidence may include, but is not limited to: prior work history (to include dates of work performed as an employee, who the work was for, what work was performed); OWTS license; other licenses held; references from engineers, plumbers, or prior licensed employers; license card demonstrating that the applicant is/was a member of a corporation or business entity. If after the Board staff review of the application, the Board deems the evidence presented insufficient to demonstrate that the applicant is capable of performing the work of an underground utility contractor, the Board may direct the applicant to appear before the full Board or a Board subcommittee to assess the applicant's qualifications.
- d) **Bond:** The applicant must obtain and provide the Board with a bond in the amount of twenty thousand dollars (\$20,000) with the CRLB as the holder for a two-year period and conditioned on the language contained in R.I.G.L. § 5-65.3-10.
- e) **Insurance:** The applicant must obtain and provide the Board with documentation of public liability and property damage insurance covering the work of the underground utility contractor and in the amount of one million dollars (\$1,000,000) (combined single limit, bodily injury, and property damage) as required by R.I.G.L. § 5-65.3-9. The insurance must be continuously in effect throughout the period of licensure; failure to maintain insurance shall invalidate registration and may result in a fine to the licensee. Applicants must provide verification of a minimum of six (6) month's insurance coverage from the date of application. A certificate of insurance constitutes satisfactory evidence of insurance coverage so long as it lists the Board as the holder and the policy number. Failure to secure and maintain insurance coverage may result in the imposition of fines and penalties (*see* Section 5.3.8). If the licensee, in performance of work subject to Chapter 5-65.3, through failure to comply with this subsection, causes damage to another entity or to the property of another person for which that entity could have been compensated by an insurance company had the required insurance been in effect, the Board may assess a civil penalty against the licensee in an amount up to \$5,000.00 in addition to such other action as may be taken under R.I.G.L. § 5-65.3-1 *et. seq.*
- f) **Workers' Compensation Coverage:** If the applicant states that he/she has one or more employees, the applicant must provide the Board with proof of proper workers' compensation coverage as required under R.I.G.L. 28-29 or documentation of waiver of workers' compensation coverage.
- g) **Examination Certification:** As required by R.I.G.L. § 5-65.3-4(2), the applicant must

take and pass a written examination (unless grandfathered pursuant to R.I.G.L. § 5-65.3-7 – *see* Section 3.2.2). The examination will test the applicant’s understanding of the rules and regulations, and his/her ability to read and interpret approved plans and specifications. Upon passage of the examination, the applicant must submit to the Board with his/her application certification of passage of the examination. If the applicant fails an examination, he/she is permitted to take further examinations to obtain a passing grade upon payment of the prescribed fee for each examination. The Board will ensure that third-party testing company conducts at least three test sessions a year. Testing locations, dates, and times will be posted on the Board’s website. The applicant is responsible for all fees/costs associated with the written examination, including study materials.

- h) **Corporate Documents:** If the licensee is a corporation or LLC, the corporation or LLC must be properly registered with and certified by the Secretary of State’s Office. The applicant must provide the corporate documents to the Board as proof that the corporation or LLC is properly registered with the Secretary of State. Any lapse or revocation of corporate status with the Secretary of State may result in the imposition of fines and/or action on the license, including suspension, revocation, or invalidation (*see* Sections 5.3.6 and 5.3.1).
- i) **Photo:** If not included in pre-license application, the applicant must provide the Board with a true and accurate 1” x 1” photograph or digitalized photograph taken by the Board for an additional fee of \$10.00.
- j) **Proof of Rhode Island Residency:** The applicant must provide the Board with proof that the applicant is a resident of Rhode Island (utility bill, tax form, other official document with applicant’s current Rhode Island address).
- k) **Agent of Service:** Out-of-state applicants must provide a power of attorney constituting and appointing a registered agent in Rhode Island (Agent of Service/ Power of Attorney Form).
- l) **Affidavit:** The applicant must submit a notarized affidavit attesting to the applicant’s knowledge of the relevant governing laws: Underground Utility Contractor Law (§5-65.3-1 *et seq.*) and the Contractors’ Registration Act (§5-65-1 *et seq.*) (Affidavit Form).
- m) **Military Service Member:** Military service member applicants for licensure who possess a registration/license from another state may include in their application evidence of education, training, or service completed as a member of the Armed Forces or Reserves of the United States, the National Guard of any state, the Military Reserves of any state, or the Naval Militia of any state and evidence of their out-of-state registration/license. *See* R.I.G.L. § 5-87-1. The Board or its Executive Director will consider such evidence toward the qualifications for Board governed registration/licensure and will expedite the issuance of the registration/license once the out-of-state registration/license has been deemed to be substantially equivalent to Rhode Island requirements. If obtaining the Rhode Island registration/license has additional requirements that are not the same as the out-of-state registration/license, the Board or its Executive Director may issue the service member a temporary registration/license while the service member completes the additional requirements so long as the service member has the proper insurance and bonding (if required) in place.
- n) **Military Service Member’s Spouse:** The Board or its Executive Director will expedite the issuance of a Board governed registration/license to a military service member’s

spouse who holds a current registration/certification/license in another state to perform professional services; whose spouse is a member of the armed forces of the United States; whose spouse is the subject of a military transfer to Rhode Island; and who left employment to accompany the spouse to Rhode Island. *See* R.I.G.L. § 5-88-1. The Board or its Executive Director will determine whether the out-of-state registration/certification/license is substantially the same to the registration/license in Rhode Island. If obtaining the Rhode Island registration/license has additional requirements that are not the same as the out-of-state registration/license, the Board or its Executive Director may issue the service member's spouse a temporary registration/license while he/she completes the additional requirements so long as the service member's spouse has the proper insurance and bonding (if required) in place.

- o) Falsified documents, inclusive of affidavit, may be punishable with fines up to \$10,000.00.

3.2.2 Applicants Previously Licensed by a Rhode Island City/Town (Grandfather Clause – until July 1, 2015)

Between January 1, 2015 and July 1, 2015, the grandfather clause of R.I.G.L. § 5-65.3-7 will allow those who previously were licensed by a Rhode Island city or town within the previous five (5) years to obtain an underground utility contractor's license without having to take the written examination.

An applicant previously licensed by a city or town in Rhode Island as an underground contractor must complete the above requirements (b) – (f) and (h) – (n) in Section 3.2.1 for new applicants and must also provide documentation of the previous city/town issued license. Such applicant is not subject to the \$50.00 pre-license application fee in Section 3.2.1(a).

After July 1, 2015, the grandfather clause is no longer applicable and all applicants must comply with the New Applicant procedures as outlined above.

3.3 INCOMPLETE APPLICATIONS

The Board may return an incomplete application for license to the applicant with an explanation of the deficiencies. Returned applications may be subject to late filing fees.

3.4 DENIED APPLICATIONS

When an application for a license is denied, a hearing shall be granted to the applicant provided that the aggrieved applicant requests such a hearing in writing and within ten (10) days of the denial with the Board. R.I.G.L. § 5-65.3-12(b). The hearing shall be held in accord with R.I.G.L. § 42-35-1 *et seq.* and as set out below.

- 1) The Board will provide the applicant a notice of denial of license and will grant a hearing provided the aggrieved/denied applicant requests a hearing in writing to the Board within ten (10) days of the denial.
- 2) Upon a timely request for a hearing, the matter will be set for consideration by the members of the full Board at the next regular meeting for which agenda space is available. The Board will mail notice of the time, date, and location of the scheduled hearing to the address provided on the applicant's application.
- 3) Postponement/Continuance: a postponement or continuance may be requested and granted in the same manner as stated in Section 4.3.2.

- 4) At the hearing, the aggrieved/denied applicant will be afforded the opportunity to respond to and present evidence and argument regarding the denial of his/her license.
- 5) After the hearing, and based upon the evidence and arguments presented, the Board will determine if the aggrieved/denied applicant should be granted a license or if the denial should be affirmed. The Board will issue a final order with its determination.
- 6) If the denial is reversed by the full Board, the Board will continue processing and issuing the license to the applicant. If the denial is affirmed, the license will not be issued and the applicant may appeal the final order to Superior Court pursuant to the Administrative Procedures Act, R.I.G.L. § 42-35-1 *et seq.* and Section 4.7.

3.5 LICENSE CARDS

Each person will be issued a license card and/or certificate of license that specifies the person is an underground utility contractor and contains his/her assigned license number and his/her photograph.

A corporation's or LLC's license card will contain the company's license number and the name of the principal responsible. If the corporation/LLC has employees, corporate officers, partners, or members that need to pull permits or other documentation under the corporation's/LLC's name and license number, the corporation/LLC can obtain additional corporate cards from the Board for that purpose. Such additional license cards may be issued by the Board upon receipt of a \$20.00 fee for each additional card and the \$10 cost of digital picture. These cards may be used only for permit applications, license verification, or identification purposes and are only valid if all the criteria established by these rules and regulations as well as law are maintained by the business entity.

Licensee must have the license card and/or certificate in his/her possession while performing or offering to perform work, and the card must be available and presented to Board investigators upon request.

If a license card is lost, misplaced, or destroyed, the licensee shall file an affidavit to that effect (Lost/Misplaced Card Affidavit Form) and pay a fee of \$25.00.

3.6 LICENSE EFFECTIVE DATE, TERM and LAPSED/SURRENDERED LICENSE

3.6.1 Effective Date

The effective date of a license is when all documents and/or fees required by law and these regulations have been processed by the Board, including documentation that the applicant has successfully passed the written examination (if applicable).

3.6.2 License Term/Expiration

A license is valid for the two year term for which it is issued and expires every two years on the anniversary date of the license's issuance, which is the first of the month of issuance. The license is valid only if the following conditions are met throughout the license period:

- a) The insurance required by R.I.G.L. § 5-65.3-9 and the bond required by R.I.G.L. § 5-65.3-10 remain in continuous effect (if the Board receives notice of lapse, cancellation or non-renewal of insurance from the insurance carrier or bonding company, insurance or bond is considered non-continuous and licensee may be subject to a fine); and
- b) If the licensee is an individual, survival of that individual; or

- c) If the licensee is a partnership, no change in the composition of that partnership, by death or otherwise; or
- d) If the licensee is a corporation or limited liability company, survival of that corporation or limited liability company, including compliance with all applicable laws governing corporation; and
- e) The licensee maintains good standing with the Board and has paid all applicable fees and/or fines.

3.6.3 Lapsed/Surrendered License

A person whose license has lapsed is considered non-licensed from the date the lapse occurred until the date the license is renewed, reissued, or reinstated. During a period of lapse, the person shall not solicit or perform the work of an underground utility contractor.

If a license becomes invalid or lapses, the license card must be returned to the Board; at that time, the card will be deemed surrendered. A license surrendered will not be responsible for any late fees unless an outstanding violation(s) exists and in that case would be subject to fines as well as other fees. Surrendering of license must be accompanied by a statement as to why the license is being surrendered and include the return of the license card to the Board (Surrendering of Registration/License Form). If the licensee is a corporation or LLC and employees, partners, officers, or other members are in possession of additional cards, those cards must also be surrendered to the Board.

If a license lapses for more than sixty (60) days, thereafter the licensee will be required to become licensed anew and will have to take the written examination and may be subject to late fees. At no time during the period of lapse may any underground utility work be solicited or performed.

The Executive Director will grant an exception for lapsed licenses of military personnel called to duty or service.

3.7 RENEWAL AND REISSUANCE OF LICENSE

A license issued by the Board shall expire every two years on the anniversary date of the license's issuance (on the first of the month of issuance) and may be renewed on or before that date for a period of two years upon payment of the \$200.00 renewal fee, as set forth in R.I.G.L. § 5-65.3-5. All renewal fees are non-refundable.

A license may be renewed upon the licensee's completion of the renewal form as prescribed by the Board, payment of the required fee or fees, and valid certificates of insurance coverage and bond as described in R.I.G.L. §§ 5-65.3-9 and 5-65.3-10 and in these regulations. The licensee may be required to sign a new affidavit and may be required to have a new digital photograph taken by the Board (fee of \$10.00) in order to renew his/her license. Additionally, an out-of-state licensee must provide the Board with the current name and contact information of the agent of service/ power of attorney.

The effective date of a renewed or reissued license is when all documents and/or fees required by law and these regulations have been processed by the Board.

If a license card has been surrendered and the licensee wishes to reinstate, no additional charge will be administered if reinstatement is sought within the license period. If one surrenders

his/her license card it will not be reissued without penalty if the licensee has any outstanding claims and/or violations.

A late fee of \$35.00 shall be charged for any license renewal, reissuance, or reinstatement received by the Board after the license's expiration date.

The Board may return an incomplete application for renewal of licensure to the licensee with an explanation of the deficiencies. Returned forms may be subject to late filing fees.

Falsified documents, inclusive of affidavit, may be punishable with fines up to \$10,000.

3.8 REVOCATION OR SUSPENSION OF LICENSE AFTER HEARING

Pursuant to R.I.G.L. § 5-65.3-12, in addition to imposing penalties/fines against the underground utility contractor or person required to be licensed, the Board may SUSPEND or REVOKE the license of any underground utility contractor after a hearing (as conducted in accord with R.I.G.L. § 5-65.3-13, Section 4.3 of these Rules and Regulations, and the Administrative Procedures Act) when the weight of the evidence establishes any one or more of the following violations:

- a) Obtaining or conspiring with others to obtain a license by inducing the issuance of that license in consideration of the payment of money or any other thing of value, or by and through a willful or fraudulent misrepresentation of facts in the procurement of a license;
- b) Gross negligence or incompetence in the performance of any licensed work in accordance with any underground utility ordinance, or rules of any city or town, or any law of this state regulating the conduct of sewer, drain, and water work;
- c) Willfully and fraudulently loaning its license to any other underground utility contractor for the purpose of permitting that underground utility contractor to engage in any underground utility work in violation of the provision of this chapter;
- d) Willfully violating any of the provisions of Ch. 5-65.3; and
- e) For any violation to § 5-65-10 of the Contractors' Registration Act, including:
 - i. That the licensee has violated § 5-65-3 (requirement to be licensed in order to undertake, offer to undertake, or submit a bid to do underground utility contractor work; fail to notify the Board of any change in partners or corporate officers; obtain a permit without a valid license; fail to maintain a list of all subcontractors or other licensees/contractors performing work for the licensee; hiring non-registered or non-licensed subcontractors; include license number in all advertising; fail to obtain permits prior to commencing work; fail to have a written contract for a project over \$1,000; fail to have a right of rescission in the contract; fail to provide owner a notice of possible mechanic's lien, etc.);
 - ii. That the insurance or bond required by § 5-65.3-9 and § 5-65.3-10 are not currently in effect;
 - iii. That the underground utility contractor engaged in dishonest or fraudulent conduct that the Board finds injurious to the welfare of the public;
 - iv. Has violated a rule or order of the Board;
 - v. That the licensee has knowingly assisted an unlicensed person to act in violation

of this chapter;

- vi. That a lien was filed on a structure/property under Ch. 28 of Title 34 because the licensee or applicant wrongfully failed to perform a contractual duty to pay money to the person claiming the lien;
- vii. That the licensee has substantially violated state or local building codes;
- viii. That the licensee has made false or fraudulent statements on his/her application;
- ix. That a licensee has engaged in repeated acts in violation of § 5-65.3-1 *et seq.* and the Board's rules and regulations, inclusive of substandard workmanship and any misuse of license;
- x. That the underground utility contractor performed work or arranged to perform work while his/her license was suspended, invalidated, or revoked;
- xi. That the licensee breached a contract;
- xii. That the licensee performed negligent and/or improper work;
- xiii. That the licensee failed to complete a project for underground utility work or a willful failure to comply with the terms of a contract or written warranty;
- xiv. That the licensee has misrepresented his/her license status as valid when the license is actually suspended, revoked, invalidated, inactive, or the person is not licensed as required by the Board;
- xv. That the licensee has failed to pay a fine or comply with any order issued by the Board;
- xvi. That the licensee has failed to sign the affidavit required by the Board for licensure or renewal of license;
- xvii. That the licensee has violated any of the provisions in R.I.G.L. Chapters 25-3, 28-3, 28-12, 28-14, 28-36, 28-50, and/or 37-13 (though no monetary penalties may be assessed for violations of these chapters, the Board may suspend or revoke the license for such violations);
- xviii. That the person (licensed or not) used another contractor's license or registration or identification card, or allows another person to use his/her underground utility contractor's license fraudulently in any way;
- xix. When the use of fraudulent advertising entices an individual to hire an unlicensed underground utility contractor.

3.9 REVOCATION OR SUSPENSION OF LICENSE WITHOUT A HEARING

Pursuant to R.I.G.L. §§ 5-65.3-12(3) and 5-65-10(f), when a licensee is acting to the detriment of the health, welfare, and safety of the general public, the Board's Executive Director may revoke or suspend a license for a period of thirty (30) days without a hearing for just cause.

3.10 REINSTATEMENT/CONDITIONAL REINSTATEMENT OF LICENSE

A license revoked may only be reinstated or reissued, within the Board's discretion, upon written request and presentation to the Board of sufficient evidence or proof of settlement or full payment of all outstanding claims, violations, and/or Board orders.

The Executive Director may reissue or reinstate a suspended license upon proof of compliance with or arrangements to comply with all outstanding orders issued by the Board and any settlements, claims, or violations.

Upon written request to the Board, the Board or the Executive Director may, within their discretion, conditionally reinstate the license and/or attach conditions to the reinstated license, including but not limited to: contract amount limitations; time limitations for performance; contract reviews by the Board; or Board other monitoring.

Disciplinary action taken on a license held by a corporation, LLC, partnership, or joint venture may preclude future licensing of the principal of that business entity.

DIVISION 4

COMPLAINTS/CLAIMS

4.1 FILING OF COMPLAINTS/CLAIMS

4.1.1 Prerequisites for Complaints/Claims

Complaints/Claims received by the Board regarding licensed or unlicensed underground utility contractor work performed on residential or commercial structures and/or property will be accepted by the Board. Complaints/Claims will be accepted only for work performed (or offered to be performed) upon structures and/or property located within the boundaries of the State of Rhode Island. For claims involving other licenses or registrations governed by the Board, refer to the corresponding rules and regulations for those licenses/registrations.

4.1.2 Complainants/Claimants

A complaint/claim against an underground utility contractor (or person required to be licensed as an underground utility contractor) may be submitted by any person, organization, agent, member of the Board or Board staff, or by any state/local municipality where sufficient evidence has been obtained to sustain a reasonable belief that a violation of Ch. 5-65.3 or these Rules and Regulations has occurred.

Additionally, a subcontractor properly registered/licensed under the Board's authority may submit a complaint/claim against an underground utility contractor (or person required to be licensed as an underground utility contractor) for issues arising out of a contract between the subcontractor and an underground utility contractor for breach of contract, unpaid labor and/or materials furnished under the contract.

Note: The Board will only impose fines/penalties or take action on the underground utility contractor's (or person required to be licensed) license; the Board will not award monetary damages to any claimant.

4.1.3 Complaint/Claim Submission By Residential Property Owner or Subcontractor

When submitting a complaint/claim, residential property owner claimants or subcontractor claimants shall provide, in writing, with reasonable particularity, a statement of facts that, if proved, would be sufficient to constitute a violation of one or more of the provisions of Ch. 5-65.3 or these Rules and Regulations. Complaints shall be submitted to the Board on a Statement of Claim form prescribed by the Board. The Statement of Claim must be accompanied by a \$25.00 filing/processing fee. The filing fee may not be refundable. The complaint may also provide copies of supporting documentation, inclusive of, but not limited to:

- a) Written contract and agreements;
- b) Invoices;
- c) Billings;
- d) Estimates;
- e) Receipts;
- f) Cancelled checks;

- g) Court adjudication or binding arbitration information/judgments;
- h) Notices of counter claims by respondents.

4.1.4 Complaint/Violation Submission By State or Municipality

When the state or local municipal authority involved with the day-to-day inspections of underground utility work (R.I.G.L. § 5-65.3-18) determines that the underground utility contractor (or person required to be licensed) violated a provision of Ch. 5-65.3, these Rules and Regulations, and/or the state/local municipal regulations and rules for underground utility contracting work, the state or municipality must first contact the underground utility contractor to correct the issue or perform in accord with the plans and specifications or other appropriate standards.

If the state or municipality is unable to resolve the issue with the underground utility contractor, the state or municipality may then file a complaint with the Board on the form provided by the Board. (State/Municipal Complaint Form). The state or municipality must submit in writing, with reasonable particularity, a statement of facts that, if proved, would be sufficient to constitute a violation of one or more of the provisions of Ch. 5-65.3 or these Rules and Regulations and provide any accompanying evidence of the violation. State or Municipal authorities are exempt from paying a complaint filing fee.

4.1.5 Complaint/Claim Filing Dates

A claim submitted to the Board shall be deemed to have been filed when a completed statement of claim form and applicable fee have been received by the Board, inclusive of electronic filings. If the complainant/Board is seeking to revoke the underground utility contractor's license (*see* Section 3.8), a complaint must have been filed with the Board within one year immediately following the date(s) of violation(s).

4.1.6 Review and Processing of Complaint/Claim by Board

Upon timely receipt of the claim form and fee (if applicable), the Board's staff will review the matter and determine if the complaint/claim is valid and falls within the criteria established by statute and these rules and regulations.

The Board staff reserves the right to inspect the property subject to the claim. If the claimant refuses access, the Board may dismiss the claim.

If the complaint/claim is deemed valid, Board staff will provide a copy of all claims filed to the person(s) against whom the complaint/claim is filed and to legal counsel if an entry of appearance or representation has been provided to the Board.

During the investigation, if the Board staff determines that a licensee (or person required to be licensed), against whom a complaint/claim has been filed, has breached a contract or performed negligent work, the Board staff may recommend a resolution consistent with the terms of the contract or with generally accepted industry standards.

The Board staff may propose a settlement to resolve any claim during the investigative process. If the parties involved sign a settlement agreement put forth by the Board staff, the agreement shall be binding unless breached by either party. The Board may close a settled claim.

In the event that the claim is not resolved in the investigative stage, the claim may proceed to an administrative hearing pursuant to R.I.G.L. § 42-35-1 *et seq.* and Section 4.3 for action on the license and/or assessment of fines.

4.1.7 Processing Contracts with Arbitration Agreements

If a complaint/claim is received which is based upon a contract that contains an agreement by the parties to arbitrate disputes arising out of the contract, the specific terms of the arbitration agreement supersede the Board's regulations. Once the arbitrator renders a decision, that decision shall be binding upon the participants. The parties may petition the Board, within 90 days after the arbitrator's decision is rendered, to take action on the underground utility contractor's license and impose fines if warranted.

4.2 THE BOARD'S RIGHT TO REFUSE AND/OR DISMISS CLAIMS

- 1) The Board may refuse to accept a complaint/claim if the facts and issues of the complaint/claim are substantially the same as those in a complaint/claim previously filed by the same claimant that was disposed.
- 2) The Board may refuse to process a claim that involves a contract that is administered, reviewed and inspected by a local, state or federal agency when disbursement or administration of the contract sum is contingent upon the approval of the agency.
- 3) The Board may refuse to process a complaint/claim or may close the complaint/claim file if the claimant fails to respond to the Board's requests for information and documentation within the time period specified by the Board or if the claimant does not allow the Board staff access to the property for investigation purposes.
- 4) The Board may discontinue processing a claim whenever it determines that the issues involved are more suited to adjudication by a court or that the same issues involved in the claim have been submitted by either party to court, arbitration or other entity authorized by law to affect a resolution.
- 5) If at any time prior to the commencement of an administrative hearing the Board receives written documentation that either party has filed a civil action in a state court for determination (excepting a petition to enforce a lien pursuant to R.I.G.L. § 34-28-10), it may discontinue processing the claim. The Board may, however, take action on the license and assess fines.

4.3 ADMINISTRATIVE HEARINGS

Administrative hearings may be held before a hearing officer of the Board or a hearing officer appointed by the Executive Director. Such hearings are to be conducted according to R.I.G.L. § 42-35-1 *et seq.* and as delineated herein. License suspensions and revocations under R.I.G.L. §§ 5-65.3-12, 5-65.3-13, and Section 3.8 will be heard in the same manner as set forth in this Section.

4.3.1 Notice of Hearing

1. Unless otherwise agreed to by the Board and the parties, the Board shall schedule hearings before an administrative hearing officer no sooner than 20 calendar days from the date the parties are notified of the hearing unless a postponement is requested by the parties pursuant to Section 4.3.2.
2. For the administrative hearing process, the Board will issue a notice of hearing, inclusive

of the time, date, and location of the scheduled hearing and potential claims, disciplinary actions, and/or fines to be assessed against the respondent. At the hearing, the hearing officer and/or Board may address and impose fines for additional violations or matters based on the evidence presented. If parties refute such additional violations, or wish to provide additional evidence to refute such violations, a continuance may be requested.

3. Notice of hearing will be sent to the last known address of the respondent. For out-of-state underground utility contractors/respondents, notice may also be sent to the agent of service.

4.3.2 Hearing Postponements

A postponement of a hearing may be granted at the request of a party if:

1. The request is promptly made after the party receives the notice of hearing; and
2. The party has just cause as stated in the request, for not attending the hearing at the time and date set. For the purposes of this section, just cause exists when:
 - a) The circumstances causing the request are beyond the reasonable control of the requesting party; and
 - b) Failure to grant the postponement would result in undue hardship to the requesting party.
3. The Executive Director or designee, upon receipt of documentation, within 24 hours, may postpone a hearing for just cause.
4. Hearings that are continued for just cause may be rescheduled by the Board within the 20 day hearing notice period and written notice may be waived in this instance.

4.3.3 Failure to Appear at Hearing

1. **Claimant/Complaining Party Fails to Appear:** If the claimant, after being properly served notice of the hearing in accordance with these rules, fails to appear at a hearing, the Board will dismiss the claim, unless it finds that failure to appear was caused by circumstances outside the control of the claimant.
2. **Respondent/Registrant/Licensee Fails to Appear:** If the respondent, after being properly served notice of a hearing in accordance with these rules, fails to appear at a hearing, the Board will issue a proposed default order based upon the claimant's or Board's representation of a prima facie case, unless it finds that failure to appear was caused by circumstances outside the control of the respondent. At the discretion of the Executive Director, if cause is beyond the control of the respondent, a new administrative hearing may be scheduled. If the hearing is not rescheduled and the proposed default order issues, the respondent may appeal the proposed default order to the Board within 20 days of issuance date of the proposed default order under Section 4.6.

4.3.4 Board Representation by Officer or Employee

1. Board staff, investigators, and employees may appear on behalf of the Board in compliance hearings involving the possible imposition of civil penalties, and in other compliance and claim hearings on an individual case basis.
2. When Board officers or employees are representing the Board in a hearing, the presiding hearing officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does

not change applicable law on waiver of the duty to make timely objections.

3. Where such objections may involve legal argument, the presiding hearing officer shall provide reasonable opportunity for Board officers or employees to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

4.3.5 Hearing Procedures and Orders of the Board

1. At the administrative hearing, the claimant:
 - a) Shall submit substantiating evidence to support the allegations of the claim;
 - b) Shall seek remedies, imposition of fines, or action on the license for only those items shown on the statement of claim form (exclusive of monetary awards).
3. At the administrative hearing, the respondent shall provide evidence refuting the allegations in the claim form.
4. Claimant or respondent may challenge and offer evidence to disprove or refute the Board's investigative report at an administrative hearing and provide experts to testify on their behalf.
5. The Board has the power to subpoena and bring before it any witness to take testimony in any hearing or proceeding (*see* R.I.G.L. § 5-65.3-14).
6. Based upon evidence received at the hearing, the hearing officer will prepare findings of fact and conclusions of law and will issue a proposed order. The proposed order may impose fines for violations of Ch. 5-65.3, relevant provisions of Ch. 5-65, and these Rules and Regulations, may send the respondent back to perform repairs, may take action on the license, may impose fines/penalties, or may dismiss the claim. The proposed order will be mailed to the respondent's last known address on record with the Board.
7. The record of administrative hearings will include a tape or digital recording of the proceeding. Such recordings will be discarded once the claim has been disposed.
8. If the proposed order is not fulfilled, and no appeal or exceptions to the proposed order have been received by the Board within 20 days of the mailing of the proposed order (*see* Section 4.6), a final order will issue and will reflect the fines or other remedies/penalties imposed by the hearing officer. The respondent has thirty (30) days to appeal a final order to Superior Court under Section 4.7 and in accord with R.I.G.L. § 42-35-1 *et seq.*

4.4 COURT JUDGMENTS

Court judgments may constitute the basis for regulatory action against the underground utility contractor's license, which may result in the imposition of fines and penalties under Section 5.4.

Upon receipt of a timely filed court judgment, the Board may issue a notice of hearing and schedule an administrative hearing (in accord with Sections 4.3 or 5.4) in order to take action on the license, utilizing the judgment as a the basis for such action.

A judgment is timely filed if a copy of the judgment is provided to the Board within 90 days of the entry of judgment.

4.5 BANKRUPTCY/RECEIVERSHIP

If a licensee files in bankruptcy court, the Board must be notified in writing by the licensee and kept informed of the status of the case until dismissed, discharged, or resolved in court. The same notice must be provided if licensee enters into receivership. Notice of bankruptcy may stay agency proceedings until the bankruptcy case has been discharged, closed, or otherwise resolved or dismissed.

Fines Non-dischargeable: If a licensee files bankruptcy or enters into receivership, civil fines imposed by the Board are non-dischargeable. The Board, at its discretion, may alter or reduce the amount of fines in efforts to resolve claims.

4.6 EXCEPTIONS TO BOARD ORDERS (“BOARD APPEALS”)

1. **Right to File Written Exceptions to Proposed Order:** Claimant or respondent may file written exceptions to a proposed order or proposed default order if he/she believes that the hearing officer has made a procedural error, that the proposed order or proposed default order is not supported by evidence received at the administrative hearing, or for other legal or procedural reason.
2. **Time Frame and Requirements for Filing Appeal Exceptions:** To be considered, exceptions to a proposed order or proposed default order must be written on the appropriate form provided by the Board, and must be received by the Board within 20 days of the date of mailing of the proposed order or proposed default order, accompanied by a non-refundable twenty dollar (\$20.00) processing fee.
 - a) If written exceptions are not timely received, or payment is not provided, the Board may issue a final order. Final orders may be appealed to Superior Court. *See Section 4.7.*
 - b) If exceptions are timely received, the matter will be set for consideration by the members of the full Board at the next regular meeting for which agenda space is available. The Board will, if possible, work to ensure that underground utility contractor Board members are in attendance for a meeting for which involves fines/penalties imposed upon an underground utility contractor.
3. **Notice of Hearing:** Notice of the time, date, and place of hearing will be mailed to the parties along with copies of the exceptions that were filed. Response to and any written argument for or against the proposed order or proposed default order will be accepted up to the Board meeting date if the original exceptions were timely received.
4. **Attorney Entry of Appearance:** Claimant and respondent, and/or their attorney(s) may appear before the members of the full Board to argue for or against the proposed order or proposed default order. Attorney(s) must file entries of appearance with the Board prior to appearing before the Board. Oral argument will be permitted only if the original exceptions were timely received.
5. **Board Consideration of Exceptions:** At the meeting of the full Board, the Board will consider evidence received at the underlying hearing, the written exceptions, and written or oral argument for or against the proposed order or proposed default order, but the Board will not consider new or additional evidence. Time allowed for oral argument before the members of the full Board may be limited to fifteen minutes for each side. The

Board may also hear motions to vacate or other motions as long as relevant to Ch. 5-65.3.

6. **Decision of the Board:** The members of the Board may affirm the proposed order/proposed default order and findings of fact, modify either or both, remand the case for a new hearing or a hearing/clarification on specific matter, or dismiss the case. The Board will issue a final order after the meeting unless the matter is continued or the case is remanded for a new hearing or for clarification of an issue. The Board may also revoke/suspend or take action on the license and impose fines.
7. **Final Order of the Board:** After the Board has rendered its decision and a final order is issued, the Board will mail the final order to the parties at last known addresses and will serve a copy of the final order in hand on the respondent (and/or agent of service). The civil penalties/fines assessed against the respondent in a final order are due and payable on the issuance date of the final order or as agreed to by the parties and the Board. The Board may initiate its own collection proceedings and actions as allowed by law.
8. **Administrative Appeal:** A party may appeal the final order of the Board to the Superior Court pursuant to the Administrative Procedures Act, R.I.G.L. § 42-35-1 *et seq.* and Section 4.7.

4.7 ADMINISTRATIVE APPEALS

Once a final order is issued by the Board, a party may appeal that final order pursuant to the Administrative Procedures Act, Chapter 42-35 of the General Laws. The complaint/appeal must be filed within thirty (30) days after mailing notice of the final decision of the agency, or if a rehearing is requested, within thirty (30) days after the decision thereof. *See* R.I.G.L. § 42-35-15(b).

The appealing party must request from the Board and pay for the underlying agency record within thirty (30) days after the service of the complaint on the agency. *See* R.I.G.L. § 42-35-15(d). It is also the responsibility of the appellant to pay for and obtain any transcripts of hearings that may need to be included in the record.

DIVISION 5

CIVIL PENALTIES/VIOLATIONS

5.1 AUTHORITY AND SCOPE

The Board has the authority to assess and impose civil penalties for violations of R.I.G.L. Ch. 5-65.3, and as set forth in these corresponding Rules and Regulations. Fines for other registrations or licenses governed by the Board are set forth in the relevant Rules and Regulations for each discipline.

Pursuant to R.I.G.L. § 5-65.3-17, the Board has discretion to impose fines and civil penalties for violations of the General Laws and Sections of the Rules and Regulations as follows:

First Offense: up to \$5,000
Second and
Subsequent Offenses: up to \$10,000

The Board also has discretion to adjust fines in order to resolve violations and claims, and pursuant to R.I.G.L. §§ 5-65.3-12(5) and 5-65-10(k), the Board may put a lien on property held by an underground utility contractor and the Board may double the fines if a complaint reveals serious code infractions, unsatisfied mechanic's liens, abandonment of a job for a substantial period of time, or any other conduct detrimental to the public.

5.2 CONSIDERATIONS FOR ASSESSING FINES

In determining the amount of any penalty or fine to be assessed, the Board may consider factors including, but not limited to, the following:

- a) The circumstances leading to or causing the violation;
- b) The severity of the violation and the risk of harm to the claimant and/or public;
- c) The Board's record of the respondent/licensee, or person required to be licensed (including prior claims and violations);
- d) Whether the amount imposed will be a substantial economic deterrent to the violator;
- e) The economic benefits gained by the violator as a result of non-compliance;
- f) The interest of the public;
- g) Willfulness of the violation; and
- h) The extent to which the respondent/licensee has sought to compensate the victim(s) of the violation(s) and/or ameliorate the issue.

5.3 SCHEDULE OF FINES

The Board may assess fines according to the following schedule:

5.3.1 Non-Licensed Underground Utility Contractor

A person not licensed or working with a revoked, suspended, invalid, or not valid license, in violation of R.I.G.L. § 5-65.3-3:

First Offense: \$250 to \$5,000
Second Offense: \$500 to \$10,000
Any Subsequent Offenses: Maximum fines may be imposed

The Board may take previous violations of this section into consideration in determining the amount of the fine. If the work performed by a non-licensed underground utility contractor results in the filing of a complaint and the non-licensed underground utility contractor makes reasonable attempts to resolve the complaint, the Board may also take this into consideration when assessing the fines.

5.3.2 Hiring Non-Registered or Non-Licensed Subcontractor

Hiring a non-registered or non-licensed subcontractor in violation of R.I.G.L. § 5-65-3(j) (the Board may take into consideration the number of non-registered/non-licensed subcontractors hired):

First Offense: \$500 - \$5,000
Second Offense: \$1,000 - \$10,000
Any Subsequent Offenses: Maximum fines may be imposed

When a violation for hiring a non-registered/non-licensed subcontractor is issued, the license may become invalidated until the violation is resolved or hearing is requested on this offense. *See* R.I.G.L. §§ 5-65.3-12(5) and 5-65-10(a)(18).

5.3.3 Failure to Provide List of License Numbers

Failure to provide list of registration or license numbers of contractors or subcontractors in violation of R.I.G.L. §§ 5-65.3-12(5) and 5-65-3(h):

Per Offense: \$25

5.3.4 Advertising Violations

1. The fines for advertising or submitting a bid to do work as an underground utility contractor/subcontractor when not licensed, in violation of R.I.G.L. § 5-65.3-3, will result in the same fines as a non-licensed underground utility contractor as above (*see* Section 5.3.1):

First Offense: \$250 to \$5,000
Second Offense: \$500 to \$10,000
Any Subsequent Offenses: Maximum fines may be imposed

The Board may consider in assessing such a fine whether the respondent subsequently becomes licensed with the Board, withdraws the bid or advertisement, or does not perform work.

2. Failure of a licensed underground utility contractor to include license number in any form of advertising (electronic, print, business cards, vehicles, radio, television, contracts, invoices, proposals, etc.) in violation of R.I.G.L. §§ 5-65.3-12(5), 5-65-10(a)(1), 5-65-3(1):

First Offense: \$100 - \$500

Second Offense: \$250 - \$1,000

Any Subsequent Offenses: Maximum fines up to \$5,000 may be imposed.

5.3.5 Failure to List Business Names/ Fictitious Names

A license is necessary for each “business entity” regardless of the fact that each entity may be owned by the same individual. Failure to list with the Board any and all business names or fictitious names under which business as an underground utility contractor or subcontractor is conducted:

First Offense: \$500

Second Offense: \$1,000

Subsequent Offenses: \$2,000

5.3.6 Lapse or Revocation of Corporate Status

Any lapse in or revocation of a corporation, limited liability company, limited partnership, joint venture, or trust with the Rhode Island Secretary of State’s Office will result in the same fines as a non-licensed underground utility contractor as in Section 5.3.1:

First Offense: \$250 to \$5,000

Second Offense: \$500 to \$10,000

Any Subsequent Offenses: Maximum fines may be imposed

The Board may also immediately invalidate the registration or license without an administrative hearing.

If the licensee expeditiously corrects the matter and provides proof to the Board of the certificate’s reinstatement by the Secretary of State, and provides proof that no claims or issues occurred during the period of lapse or revocation, the fines may be reduced as follows:

First Offense: \$250

Second Offense: \$500

5.3.7 Fraudulent Use of a License

1. Any person or contractor, licensed or not, who uses another person’s registration/license or registration/license identification card, who alters a license card, or allows another person to use his/her underground utility contractor’s license fraudulently in any way, in violation of R.I.G.L. §§ 5-65.3-12(3) and 5-65-10(h):

Per Offense: \$2,500 - \$10,000

2. No person shall become licensed as an underground utility contractor with the Board for the purpose of deceiving or circumventing the licensing process by enabling a person whose license has been suspended or revoked to conduct business in violation of R.I.G.L. §§ 5-65.3-12(3) and 5-65-10(l):

Per Offense: \$2,500 - \$10,000 (may also result in revocation of license)

5.3.8 Failure to Maintain Insurance and/or Bond

If the licensee fails to maintain the insurance required by R.I.G.L. § 5-65.3-9 or the bond required by R.I.G.L. § 5-65.3-10 continuously until the license is terminated, revoked, or expired, the Board may assess a civil penalty against the licensee in an amount up to \$5,000 in addition to such other action as may be taken under Chapter 5-65.3. When a violation for not maintaining insurance or bond is issued, the license may become invalidated until the violation is resolved or hearing is requested on this offense.

1. Fines will be imposed if the Board receives notice from the licensee's insurance company of the insurance policy's cancellation, lapse, or non-renewal:

First Offense: \$100

Second Offense: \$200

Third Offense: \$500

Subsequent Offenses: Maximum fines up to \$5,000 may be imposed.

2. Licensees with lapsed or no insurance coverage will be considered non-licensed underground utility contractors and may be subject to the penalties set forth above for non-licensed contractors (Section 5.3.1). Licensee may not be fined if sufficient evidence is provided to the Board that timely payment to the insurance carrier was received, that a new policy was obtained, that no lapse occurred, or that the licensee intends to surrender the license permanently. If a surrendered license is reinstated, any insurance penalties that were previously issued will remain outstanding. If no such proof of coverage or change of policy is received by the Board within thirty (30) days of the notice from the insurance carrier to the Board of the policy's cancellation, lapse, or non-renewal, fines will be imposed.

5.3.9 Failure to Have Written Contract for Contracts Over \$1,000

All work performed, including labor and materials, in excess of one thousand dollars (\$1,000) shall be accompanied by a contract in writing. Fines imposed for failing to have a written contract for contracts over \$1,000:

First Offense: \$100

Second Offense: \$250

Subsequent Offenses: \$500

5.3.10 Failure to Obtain Permits

The underground utility contractor must see that permits required by the state building code or the local municipality are secured prior to commencing the work involved pursuant to R.I.G.L. §§ 5-65.3-12(a)(5), 5-65-10(a)(1), and 5-65-3(m). Failure to secure permits as required will result in fines as follows:

First Offense: \$100

Second Offense: \$250

Subsequent Offenses: \$500 up to \$5,000

5.3.11 Falsified Documents

Falsifying any documents, inclusive of affidavit, may be punishable with fines up to \$10,000.

5.4 BOARD PROCEDURE FOR ISSUING/PROCESSING VIOLATIONS

1. **Basis for Issuing Violations/Fines:** The Board may issue violations and impose fines against licensed and non-licensed underground utility contractors based on, but not limited to, the following:
 - a) Court judgment;
 - b) Complaints/claims;
 - c) Board staff investigations or observations;
 - d) State/Municipal authority investigations and/or complaints;
 - e) Disciplinary action;
 - f) Lack of insurance, bond, or workers' compensation;
 - g) Improper advertising;
 - h) Hiring non-licensed/non-registered contractor(s) or subcontractor(s);
 - i) No mechanics' lien release form/notice provided or in contract;
 - j) No license number on contract;
 - k) No license number in advertisement;
 - l) No right of rescission clause;
 - m) Action filed by other entity such as building official, other agency, city, town, etc.;
 - n) No employee(s) listed;
 - o) Violation of State Building Code;
 - p) Violation of Rule, Regulation or Order of the Board;
 - q) Working under an Invalid, Revoked, or Suspended License;
 - r) Licensee (or person required to be licensed) engaged in conduct dishonest or fraudulent conduct;
 - s) Working under another person's license number;
 - t) Licensee (or person required to be licensed) made false statements on application or to investigative staff;
 - u) Engaged in any act, conduct, or practice which violates this chapter;
 - v) Failure to provide list of sub-contractors or employees;
 - w) Failure to comply with the affidavit requirements.
2. **Tickets/Violations:** Investigative and Board staff members may also issue tickets in the field to licensees, or persons required to be licensed, for violations of Chapter 5-65.3 and these Rules and Regulations. A respondent may request a hearing for tickets and violations. Tickets and violations will be heard in the same manner as set forth below in Section 5.4.
3. **Notice of Intent to Assess Civil Penalty:** If the Board proposes to assess a civil penalty for a ticket/violation, it shall issue to the respondent a "Notice of Intent to Assess a Civil Penalty and Opportunity for Hearing – Proposed Order."
4. **Time Frame for Requesting Hearing:** The respondent must request a hearing in writing to the Board within 20 days of the date of mailing or issuance of Notice of Intent to Assess Civil Penalty.

- a) If the Board does not receive a written request for an administrative hearing within 20 days of the date of mailing the Notice of Intent to Assess a Civil Penalty and Opportunity for Hearing – Proposed Order, the Board will issue a final order. Final orders may be appealed to the Board in the same manner as set forth in Section 4.6.
 - b) If the Board timely receives a written request for a hearing, the Board will set an administrative hearing to determine whether the respondent has violated any provision of Chapter 5-65.3 or these Rules and Regulations, and if so, an estimated or potential amount of the civil penalties to be assessed.
5. **Notice of Hearing:** A notice of administrative hearing shall contain the date, time, and location of the hearing, the violations to be heard, and the amount or potential amount of the civil penalties/violations proposed by the Board. At the hearing, the hearing officer and/or Board may address and impose fines for additional violations or matters based on the evidence presented. If parties refute such additional violations, a continuance may be requested.
6. **Administrative Hearing:** Administrative hearings may be held before a hearing officer of the Board or one assigned by the Executive Director.
- a) If an attorney is representing a party, he/she must file an entry of appearance with the Board prior to hearing.
 - b) Supporting evidence of a violation may be entered into the record by the hearing officer, or by another representative of the Board.
 - c) If respondent fails to appear at the hearing, the Board must nevertheless present a prima facie case of the violation.
 - d) The respondent may present evidence to refute the allegations.
7. **Proposed Order:** Based on evidence received at the hearing, the hearing officer will prepare findings of fact and conclusions of law. After the hearing, the hearing officer will issue a proposed order assessing civil penalties/fines, requiring other disciplinary measures, or dismissing the matter. Proposed orders are mailed to the respondent's last known address on file with the Board. If the respondent fails to appear at the hearing, the Board will issue a proposed default order and mail it to respondent's last known address.
8. **Exceptions to Proposed Order/ Time Frame to File:** If the respondent does not believe the proposed order or proposed default order is supported by the evidence received at the hearing, the respondent may file written exceptions with the Board on the proper form and accompanied by a twenty dollar (\$20.00) fee within 20 days of the date of mailing of the proposed order.
- a) If written exceptions are not timely received, the Board may issue a final order as proposed. Final orders may be appealed to Superior Court under Section 4.7 and in accord with R.I.G.L. § 42-35-1 *et seq.*
 - b) If exceptions are timely received, the matter will be set for consideration by the members of the full Board at the next regularly scheduled meeting for which agenda space is available. The Board will, if possible, work to ensure that underground utility contractor Board members in attendance for a meeting for which involves fines/penalties imposed upon an underground utility contractor.
 - c) Attorney representing the respondent must submit an entry of appearance with the Board prior to the hearing before the Board.

- d) Written argument in opposition to the proposed order will be accepted before the Board meeting date if the original exceptions were timely filed and proper fee was paid.
9. **Board Consideration of Exceptions:** At the Board meeting, members of the full Board will consider evidence received at the underlying hearing, timely filed exceptions, and written and/or oral argument relative to the proposed order. Time allowed for oral argument may be limited to fifteen minutes. The Board will not consider new or additional evidence. The Board may allow the Board staff investigator to report on his/her investigative findings. After consideration of evidence and argument, the Board may affirm the proposed order and findings of fact, modify either or both, dismiss the case, or remand the case for a new hearing or hearing on a particular item. The Board will issue a final order after the Board meeting unless the case is remanded for a new hearing. If a licensed contractor has outstanding violations with the Board, the Board may take action on the license, including the suspension, invalidation, or revocation of the license.
10. **Final Order of the Board:** After the Board has rendered its decision and a final order is issued, the Board will mail the final order to the parties at last known addresses and will serve a copy of the final order in hand on the respondent and/or the respondent's agent of service. The civil penalty/fine assessed against the respondent in a final order is due and payable on the issuance date of the final order or as agreed to by the parties and the Board. The Board may initiate its own collection proceedings and actions as allowed by law.
11. **Action on License:** The Board may revoke or suspend the license of any respondent that fails to pay on demand a civil penalty/fine which has become due and payable.
12. **Administrative Appeal:** A party has the right to appeal the final order of the Board to Superior Court under R.I.G.L. § 42-35-1 *et seq.* and Section 4.7.

DIVISION 6

PERFORMANCE REQUIREMENTS

Underground utility contractors must perform all underground utility contracting work in accordance with R.I.G.L. Chs. 5-65.3, 5-65, these Rules and Regulations, any plans and specifications governing the project(s), and additionally rely on generally accepted practices, industry standards, and city/town/municipal regulations to determine if a deficiency exists and what remedies shall be implemented to correct any identified defects or problems.

The Rhode Island Contractors' Registration and Licensing Board and the Board staff, under normal conditions, will inspect underground utility contractors' work to ensure it is in accord with laws, regulations, current city/town/municipal regulations, plans and specifications governing the project, and industry standards and will inspect for code violations, violations of R.I.G.L. Ch. 5-65.3, violations of these Rules and Regulations, and violations of related provisions of Ch. 5-65. Underground utility contractor responsibility does not extend to items which have been subject to owner neglect, modifications, or abnormal use.

REGULATIONS OF CITIES AND TOWNS

In addition to following plans and specifications, all underground utility work shall be performed in accordance with the local rules, regulations, and standards specified by the city or town within which the work is being performed. R.I.G.L. § 5-65.3-8.

Pursuant to R.I.G.L. § 5-65.3-18, the appropriate municipal authority, involved in the day-to-day inspection of sewer or drain installations and underground utility contracting work shall assist the Board in enforcement of Ch. 5-65.3 and may investigate and, where appropriate, make complaints against underground utility contractors (or those required to be licensed) where sufficient evidence has been obtained to sustain a reasonable belief that a violation of Ch. 5-65.3 or these Rules and Regulations has occurred.

APPLICABLE BUILDING CODES

Underground utility work must also be performed in accordance with building codes. Building codes change from time to time, so for the purpose of compliance, the underground utility contractor should refer to and comply with the building codes that are in effect at the time of the work. Inspection of specific components or systems by registered/licensed inspectors of the governmental authority having jurisdiction will provide evidence of presumed compliance.

DEVELOPMENT OF STATEWIDE STANDARDS

The Board is currently developing a set of statewide standards for all underground utility work related to Ch. 5-65.3. The Board will utilize and compile the existing standards, regulations, and practices approved by each municipality and water authorities, as well as refer to current industry standards.

Notice Given:	06/25/2015	Filing Date:	XX/XX/2015
Public Hearing:	07/27/2015	Effective Date:	XX/XX/2015
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