

DIG SAFELY HAWAII

Know What's Below. Call Before You Dig.



Click or Call  Before You Dig
or (866) 423-7287

www.DigSafelyHawaii.com

Excavation Handbook • Sixth Edition - April 2021



Introduction

The Hawaii One Call Center (“HOCC”) Advisory Committee is dedicated to promoting organized planning and installation of underground facilities as well as protecting those substructures once placed.

The Advisory Committee was appointed by the Hawaii Public Utilities Commission. Committee members represent each of the utility industries and the excavating community. There are also committee members representing the city and county of Honolulu and the counties of Hawaii, Maui and Kauai. For additional appointments please refer to the Hawaii One Call law, Section 269E-4 beginning on page 14 of this handbook.

Because the law states that excavators must call before they dig, the HOCC is available to streamline the contact between excavators and the facility operators. Excavators can place one phone call instead of many.

This handbook has been developed as a reference tool for the Hawaii One Call Law. It is hoped that by making this information readily available, all citizens of Hawaii involved in excavating around underground facilities will Dig Safely!

One Call Center

The Hawaii One Call Center receives requests for locating underground facilities from excavators and relays these requests to facility operators. Hawaii One Call Center provides, as the name implies, a means for excavators to obtain information about the location of underground facilities by calling **ONLY** one number. This eliminates the need for duplicate calls to request the same information from each facility operator.

Business Hours

The Hawaii One Call Center is available twenty- four hours a day, seven days a week, every day of the year. Online service ticket requests are also available around the clock at **www.callbeforeyoudig.org**.

Call Center Phone Numbers

To call for a locate request dial **811** or **(866) 423-7287**.

For administrative questions please call (877) 668-4001.
Available from 8am to 5pm PST, Monday through Friday.

Instructions to Submit Using the Internet

To submit a locate request via the internet, please visit **www.digsafelyhawaii.com**. Here you can register to become an ITIC user. Just follow the easy steps below;

- √ Click on the “**ITIC**” button;
- √ Click on the state you want to register for, “**Hawaii**”;
- √ Click on the “**I Agree**” to the terms and condition;
- √ Enter your email address and phone number;
- √ Click on “**Register**”.

Helpful Web Addresses

Utility Notification Center information
www.digsafelyhawaii.com

Hawaii Public Utilities Commission
www.hawaii.gov/budget/puc

Common Ground Alliance
www.commongroundalliance.com

Hawaii Pipeline Safety
<http://primis.phmsa.dot.gov/comm/StatePages/Hawaii.htm>

Advance Notice Required

Hawaii State Law (Section 269E-7 found on page 14 of this handbook) requires that excavators provide notice at least five (5) working days, but not more than twenty-eight (28) calendar days, prior to beginning planned excavation.

Working days are based on normal business hours, from 7am to 5pm, and do not include the holidays listed on the following page. Because the **Hawaii One Call Center** is available every day, the 5 business day notification period will begin at the start of the next business day for notices called in after 5pm or on holidays.

State of Hawaii

Observed Holidays

New Year's Day
Dr. Martin Luther King, Jr., Day
Presidents' Day
Prince Jonah Kuhio Kalanianaʻole Day
Good Friday
Memorial Day
King Kamehameha I Day
Independence Day
Statehood Day
Labor Day
General Election Day
Veterans' Day
Thanksgiving Day
Christmas Day

As of January 1st 2010, these are the legal holidays defined in the Hawaii Revised Statutes to be observed by the State. Holidays that fall on Saturdays are observed on the proceeding Friday; holidays that fall on Sundays are observed on the following Monday. Election Days are established by the State Constitution.

Information Required

The **Hawaii One Call Center** requires the following information in order to complete a locate request:

Required Location Request Information

- √ Contact phone number
- √ Name of caller
- √ Address of caller
- √ The type of work being done
- √ Area marked in white (**Hawaii Law requires you to mark the area to be located in white**)
- √ Island and/or County in which the work is taking place
- √ Address or road that you are working on
(1) Nearest intersecting street

OTHER USEFUL INFORMATION:

- √ Tax map key
- √ Permit #
- √ Alternate contact information
- √ E-mail address
- √ Side of street
- √ Footages



Tax Map Key Information

The Tax Map Key can be used to identify the parcel of land for your address or dig site within the State of Hawaii.

If you have the Tax Map Key information, give that to the center and they will note it in the remarks section of the locate request. This information is useful to facility operators who will respond to your request.

Common Ground Alliance

The Common Ground Alliance (CGA) was created to further the work begun by the Common Ground Task Force established by the United States Department of Transportation (DOT) in 1998. The Task Force's work product, entitled the "Common Ground Study", provided a guide to underground utility damage prevention best practices in use throughout the United States and Canada.

To view the CGA's Best Practices please visit the following:
www.commongroundalliance.com.

Ticket Check Positive Response System

Excavators can use the Ticket Check system to easily access and view the status of a submitted location request.

Excavators and facility operators can access Ticket Check at **www.managetickets.com**. Facility operators can use the “Ticket Check” option on the left side of the screen to update the status of the location request. Excavators and the general public can use “Search & Status” on the right side of the screen to search for and check the status of location requests.

The following are brief descriptions of the codes used to find the status of a locate request:

- (1) **Clear/No Conflict** = There is no conflict with the facility operator that was notified. This facility operator does not have buried lines near the dig site as described by the excavator.
- (2) **Marked** = The facility operator has gone out to the site and marked its facilities.

(3) **Marking will be Delayed** = The facility operator is not able to mark the location within the 5 business day's requirement.

(4) **Caller made aware of available records** = The facility operator has spoken with the excavator or provided the excavator with map(s) to indicate the location of buried facility and/or lines.

(5) **Area not marked in white/No action taken** = The excavator has not marked the area in white. Hawaii law requires that excavators mark their dig site with white paint prior to calling in a locate request. Facility Operators do not consider locate requests that are not marked out in white as valid. A new request needs to be filed after the area is marked in white.

One Call Center Advisory Committee Members

Dean K. Nishina	Consumer Advocate (Dept. of Commerce & Consumer Affairs)
E-mail address:	dnishina@dcca.hawaii.gov
Telephone No.:	(808) 586-2800
William Spiegelberg	Representing the Building Industry Assoc. (Ikaika/Osmose Utilities Services)
E-mail address:	wspiegelberg@ikaika.net
Telephone No.:	(808) 228-1242
Leonard Leong	Representing General Contractors Assoc. (Royal Contracting)
E-mail address:	leonard@royalcontracting.com
Telephone No.:	(808) 839-9006
Steve Golden	Representing the Telecommunications Industry (Hawaiian Telcom Inc.)
E-mail address:	steven.golden@hawaiiantel.com
Telephone No.:	(808) 546-3877 (Committee Chairman)
Christopher K. Hall	Representing the Gas Utility Industry (Hawaii Gas)
E-mail address:	chall@hawaiiigas.com
Telephone No.:	(808) 594-5553
Vacant	Representing the Pipeline Operators Industry
E-mail address:	
Telephone No.:	
George Abcede	Representing the State Dept. of Transportation
E-mail address:	George.abcede@hawaii.gov
Telephone No.:	(808)-831-6700 ext.134

**Alan “Keone”
Thompson**

E-mail address:
Telephone No.:

Representing the County of Hawaii
keone.thompson@hawaiicounty.gov
(808) 961-8013(County of Hawaii)

Donald Fujimoto

E-mail address:
Telephone No.:

Representing the County of Kauai
dfujimoto@kauai.gov
(808) 241-4891 (County of Kauai)

Randall Ching

E-mail address:
Telephone No.:

Representing General Contractors Assoc.
(Highway Construction Company)
randy@highwayconstructionco.com
(808) 841-1511

Brandon Abelaye

E-mail address:
Telephone No.:

Representing Water Utilities
(Honolulu Board of Water Supply)
babelaye@hbws.org
(808) 748-5376

Lee A. Mansfield

E-mail address:
Telephone No.:

Representing Wastewater Utilities
(Hawaii American Water)
lee.mansfield@amwater.com
(808) 394-1285

Anthony Hong

E-mail address:
Telephone No.:

Representing the Electric Utility Industry
(Hawaiian Electric Company)
anthony.hong@hawaiianelectric.com
(808) 543-4425

Canaan Shon

E-mail address:
Telephone No.:

Representing the Building Industry Assoc.
(Hawaii Geophysical Services)
canaans@hawaiiigs.com
(808) 845-3900

Frank Planton

E-mail address:
Telephone No.:

Ex officio member representing HOCC
(One Call Concepts, Inc.)
fplanton@teleport.com
(503) 232-1987

Vacant

E-mail address:

Telephone No.:

Representing the City & County of Honolulu

Mitchell Miyoshi

E-mail address:

Telephone No.:

Representing the Cable Service Industry
(Spectrum fka Timewarner Cable)
mitch.miyoshi@charter.com
(808) 625-8370

Wendy Taomoto

E-mail address:

Telephone No.:

Representing the County of Maui
wendy.taomoto@co.maui.hi.us
(808) 270-7835

Hawaii Public Utilities Commission Contact:

PUC GENERAL LINE (808) 586-2020

SueLyn Tran

E-mail address:

Telephone No.:

Oahu (Chief Compliance Officer)

suelyn.tran@hawaii.gov

(808) 586-2122

Loren Yasuda

E-mail address:

Telephone No.:

Oahu

loren.k.yasuda@hawaii.gov

(808) 586-2136

Frank Anno

E-mail address:

Telephone No.:

Oahu

frank.f.anno@hawaii.gov

(808) 586-2104

Jacob Gandeza

E-mail address:

Telephone No.:

Kauai

jacob.a.gandeza@hawaii.gov

(808) 274-3232

Naomi Landgraf

E-mail address:

Telephone No.:

Maui (includes Lanai & Molokai)

naomi.n.landgraf@hawaii.gov

(808) 984-8182

David Mattice

E-mail address:

Telephone No.:

Hawaii (Big Island)

david.c.mattice@hawaii.gov

(808) 974-4533

Participating Facility Operators

ALOHA PETROLEUM LTD
AMERIGAS PROPANE
AT&T
COUNTY OF HAWAII WATER SERVICE
COUNTY OF HAWAII – TRAFFIC
COUNTY OF HAWAII - WASTE WATER
COUNTY OF HAWAII – DEPT OF WATER
COUNTY OF KAUAI - DEPT OF WATER
COUNTY OF MAUI – WASTEWATER
COUNTY OF MAUI – WATER
HECO FUEL PIPELINES
HANA WATER COMPANY
HANA WATER RESOURCES
HAWAII AMERICAN WATER
HAWAII ELECTRIC LIGHT COMPANY
HAWAII WATER SERVICE COMPANY
HAWAIIAN BEACHES WATER COMPANY
HAWAIIAN TELCOM, INC
HAWAIIAN ELECTRIC COMPANY
HONOLULU BOARD OF WATER SUPPLY
HONOLULU FACILITY MAINTENANCE
ISLAND ENERGY SERVICES
KALAELOA WATER COMPANY
KAPALUA WATER & WASTE TREATMENT
KAUAI ISLAND UTILITY COOPERATIVE
KILAUEA IRRIGATION COMPANY
KONA WATER SERVICE COMPANY
KUKUI ULA SOUTH SHORE COMMUNITY
LAIE WATER COMPANY

LANAI UTILITIES
MAKENA WASTEWATER CORP.
MAUI ELECTRIC COMPANY
MAUI GAS SERVICE
MID PAC PETROLIUM
MOLOKAI PUBLIC UTILITIES
OAHU GAS SERVICE
TIME WARNER CABLE
PAR HAWAII REFINING LLC
PARKER RANCH
PRINCEVILLE UTILITIES CO. INC
SANDWICH ISLES COMMUNICATIONS
SIGNATURE FLIGHT SUPPORT
SOUTH KOHALA WASTEWATER CORPORATION
STATE OF HAWAII DOT
THE GAS COMPANY
WAIMEA CENTER
WAIMEA WASTEWATER COMPANY
WEST HAWAII SEWER COMPANY
WEST HAWAII UTILITY COMPANY
WEST HAWAII WATER COMPANY
WEST MAUI LAND COMPANY

[CHAPTER 269E ONE CALL CENTER; ADVANCE WARNING TO EXCAVATORS]

Section

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Note

Repeal of chapter on June 30, 2009. L 2004, c 141, §7 deleted by L 2009, c 72, §3.

“SECTION 5. Nothing in this chapter shall be deemed or construed to preempt any federal law or regulation governing subsurface installations subject to federal jurisdiction.”

[§269E-1] Administration. This chapter shall be administered by the public utilities commission and the provisions of this chapter and of chapter 269, not inconsistent with this chapter, shall govern its administration; provided that sections 269-7.5, 269-8.2, 269-8.5, 269-9, 269-16 to 269-28, 269-30, 269-31, 269-34 to 269-43, and 269-71 to 269-111 shall not, in any respect, apply to the one call center. [L 2004, c 141, pt of §1]

[§269E-2] Definitions. As used in this [chapter], unless the context clearly requires otherwise:

“Agency” means any state or county department, commission, board, bureau, office, or other establishment of the state or county government or semi-autonomous part thereof.

“Approximate location of subsurface installation” means a strip of land not more than thirty inches on either side of the exterior surface of the subsurface installation, and does not refer to the depth of the subsurface installation.

“Center” means the one call center.

“Commission” means the public utilities commission.

“Committee” means the one call center advisory committee.

“Damage” means:

(1) The substantial weakening of the structural or lateral support of a subsurface installation;

(2) The penetration or destruction of any protective coating, housing, or other protective device of a subsurface installation; or

(3) The partial or complete severance of a subsurface installation.

“Demolition” means the wrecking, razing, rendering, movement, or removal of a structure or mass of material by means of tools, equipment, or the placement and discharge of explosives.

“Emergency” means a sudden, unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services.

“Excavation” [Repeal and reenactment on June 30, 2012. L 2009, c 72 §5.] means any operation in which earth, rock, or adisplaced by means of tools, equipment, or explosives, including but not limited to the following: grading, trenching, digging, ditching, boring, drilling, auguring, tunneling, scraping cable or pipe plowing and driving, demolition, and dredging. “Excavation” shall not include any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives as part of: (1) improving an existing principal place of residence for one or two families, or improving or constructing an appurtenance thereto, on a parcel of land two acres or less in size, zoned for residential use, which is used

or occupied or is developed, devoted, intended, or permitted to be used or occupied as a principal place of residence for one or two families; or (2) Any pest control activity regulated under chapter 460J that is not performed under contract with any county or state agency.

“Excavator” means any person, including an operator, who performs any excavation, other than an operator whose employees are performing maintenance work on the operator’s subsurface installation.

“Inquiry identification number” means the number issued by the center to every excavator who contacts the center for the purpose of excavating.

“One call center” means a private provider selected by the commission pursuant to section 269E-5 that provides advance warning to excavators of the location of subsurface installations in the area of an excavation for the purpose of protecting those installations from damage.

“Operator” means any person who owns, operates, or maintains a subsurface installation.

“Person” means any individual, firm, joint venture, partnership, corporation, association, agency, cooperative or joint stock association, contractor, subcontractor, operator, or other entity.

“Subsurface installation” means any pipeline, conduit, cable, duct, wire, sewer line, storm drain, vault, or other structure that is located underground.

“Working day” means every day from 7:00 a.m. to 5:00 p.m., except Saturday, Sunday, or any federal or state holiday. [L 2004, c 141, pt of §1 am L 2009, c 72, § 2]

Note

L 2012, c 196, §3 provides:

“SECTION 3. (a) the public utilities commission shall require any operator exempt from requirements of the one call center to participate in training seminars provided or approved by the once call center for education on excavation requirements and best practices to minimize risks.

(b) The public utilities commission shall conduct an investigation assessing the risk of residential pest control application. The commission shall submit to the legislature a report of its findings and recommendations no later than twenty days prior to the convening of the regular session of 2014.

[§269E-3] General duties and powers of the commission.

The general duties and powers of the commission shall be to:

- 1) Establish and administer a one call center that provides advance warning to excavators in this State of the location of subsurface installations in the area of an excavation for the purpose of protecting those installations from damage;
- (2) Adopt, amend, or repeal rules pursuant to chapter 91 as it may deem necessary to effectuate this chapter. The rules adopted shall have the force and effect of law and may include but are not limited to rules that:
 - (A) Forbid acts or practices deemed by the commission to be detrimental to the accomplishment of the purposes of this chapter; and
 - (B) Require operators and excavators to make reports to the commission containing information that will enable the commission to improve the accomplishment of this chapter;
- (3) Enforce this chapter and any rules adopted pursuant thereto;
- (4) Issue binding interpretations or declaratory rulings, and conduct contested case proceedings pursuant to chapter 91; and

(5) Subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including telephonic and electronic communications. [L 2004, c 141, pt of §1]

§269E-4 One call center advisory committee. (a) The commission shall establish a one call center advisory committee as a governmental entity as defined under chapter 662D to advise the commission in implementing this chapter. The committee shall consist of seventeen voting members and one ex officio nonvoting member. Of the voting members:

(1) Eleven shall be appointed by the commission to serve until successors are appointed by the commission. The appointments shall be as follows:

- (A) One from the gas utility industry;
- (B) One from the electric utility industry;
- (C) One from the telecommunications utility industry;
- (D) One from the pipeline operator industry;
- (E) Two from the General Contractors Association of Hawaii;
- (F) Two from the Building Industry Association of Hawaii;
- (G) One from the cable service industry;
- (H) One from the water utility industry; and
- (I) One from the wastewater industry;

- (2) One shall be the representative of the city and county of Honolulu designated by the mayor of the city and county of Honolulu;
- (3) One shall be the representative of the county of Hawaii designated by the mayor of the county of Hawaii;
- (4) One shall be the representative of the county of Maui designated by the mayor of the county of Maui;
- (5) One shall be the representative of the county of Kauai designated by the mayor of the county of Kauai;
- (6) One shall be the director of the state department of transportation, or the director's representative; and
- (7) One shall be the executive director of the division of consumer advocacy, department of commerce and consumer affairs, or the executive director's representative.

A representative of the center shall serve as an ex officio nonvoting member of the committee.

- (b) No member shall receive any compensation for the member's services.

(c) The committee shall advise the commission on:

- (1) The establishment of rules;
- (2) The setting of appropriate fees and assessments for the administration and operation of the center;
- (3) The selection of the center provider;
- (4) The enforcement of this chapter; and
- (5) Other aspects regarding the establishment and operation of the center;

provided that the committee shall not advise the commission in the exercise of the commission's quasi-judicial, adjudicatory functions, or participate in the commission's deliberations. The committee shall be exempt from chapter 92. [L 2004, c 141, pt of §1; am L 2006, c 95, §1]

[§269E-5] One call center established. (a) By January 1, 2006, the commission shall establish and begin administration of a one call center that provides advance warning to excavators in this State of the location of subsurface installations in the area of an excavation for the purpose of protecting those installations from damage.

In establishing the center, the commission shall consider the availability of experienced center providers. The commission shall award administration of the center to the provider the commission determines to be best qualified to provide center services. In reviewing a provider's qualifications, the commission shall consider cost, quality of service, experience, and other factors the commission deems appropriate.

(b) Pursuant to rules adopted by the commission, all operators shall furnish to the center information relating to subsurface installations that the center may use to identify operators known to have subsurface installations in the area of a proposed excavation; provided that operators shall not be required to furnish to the center information relating to subsurface installations that are deemed confidential or proprietary. [L 2004, c 141, pt of §1]

[§269E-6] One call center financing. (a) To finance the establishment and operation of the center and the administrative costs of the commission, operators shall pay to the commission a fee in an amount and at a schedule determined by the commission. The commission may also assess fees on excavators. All fees paid by operators and excavators shall be deposited with the director of finance to the credit of the public utilities commission special fund.

(b) All operators of subsurface installations in this State shall share in the operational and administrative costs of the center, except where:

- (1) All of the operator's subsurface installations are located on property owned exclusively by that operator; and
 - (2) The operator has not authorized another operator to use the property for any subsurface installation.
- (c) The commission may accept revenues, compensations, proceeds, charges, penalties, grants, or any other payments in any form, from any public agency or any other source.
- (d) Any agency required to participate may charge a reasonable fee in an amount sufficient to cover the administrative and operational costs required by this chapter.
- (e) Civil penalties collected pursuant to this chapter shall be used by the commission to educate the operating and excavating community in Hawaii and to reduce the center's operating costs.
- (f) Any operator or excavator that pays public utility fees to the commission pursuant to section 269-30 may petition the commission for approval to apply a portion of its public utility fee payments as a credit toward its center fees. [L 2004, c 141, pt of §1]

[§269E-7] Notification of excavation; inquiry identification

number. (a) Except in an emergency, every excavator planning to conduct an excavation on public or private property shall notify the center of the excavation at least five working days but not more than twenty-eight calendar days prior to commencing excavation. The excavator shall provide to the center a description of the excavation site that includes the county, place, and address or description of where the excavation will take place, including but not limited to the nearest intersecting street, side of street, footages, or other tie-in measurements as needed. An excavator need not contact the center if the excavation is:

- (1) On private property that is owned exclusively by the excavator; and
- (2) No operator has been authorized to use the property for any subsurface installation.

(b) The center shall provide an inquiry identification number to an excavator who contacts the center and shall, on that same day, notify any operator known to have a subsurface installation in the area of the proposed excavation. The inquiry identification number shall remain valid for not more than twenty-eight calendar days from the date of issuance, and after that date shall require center revalidation. An excavator may revalidate the inquiry identification number by applying to the center for revalidation prior to expiration. The excavator shall maintain a valid inquiry identification number for the duration of the excavation.

(c) The center shall maintain a record of all notifications by and from excavators and operators for a period of not fewer than three years. [L 2004, c 141, pt of §1)

[§269E-8] Marking of excavation site. (a) The excavator shall delineate the area to be excavated with white spray chalk or other suitable markings prior to calling the center. The excavator shall indicate the entire dimension of the excavation by known industrial practices and display the excavator's name, abbreviations, or initials next to or in the white spray chalk markings to identify the excavation site.

(b) When an excavator delineates an area to be excavated with white spray chalk, the excavator shall delineate the area in a manner that shall not be:

- (1) Misleading to the public using affected streets and highways;
- (2) Subject to misinterpretation as a traffic or pedestrian control; and
- (3) Construed as duplicative.

(c) Where an excavator determines that delineating with white spray chalk may be misleading, misinterpreted, or duplicative as specified under subsection (b), the excavator shall inform the center that the area to be excavated shall instead be identified with flags, stakes, or stake chasers marked with the excavator's name, abbreviations, or initials, to enable the operator to determine the area of excavation. [L 2004, c 141, pt of §1]

[§269E-9] Identification of subsurface installations by operator. (a) Any operator who receives timely notification from the center of any proposed excavation work pursuant to section 269E-7(b) shall within five working days of that notification or before the start of the excavation work, whichever is later, or at a later time mutually agreeable to the operator and the excavator:

- (1) Advise the excavator that the operator does not operate any subsurface installations that may be affected by the excavation;
- (2) Advise the excavator of the approximate location of the operator's subsurface installations that may be affected by the excavation to the extent and degree of accuracy that the information is available in the records of the operator;
- (3) Make available to the excavator, for inspection and copying at the excavator's expense, information in that specific operator's or agency's records on the approximate location of that specific operator's or agency's subsurface installations that may be affected by the excavation to the extent and degree of accuracy that the information is available in that specific operator's or agency's records; or
- (4) Locate and field mark in conformance with the American Public Works Association Uniform Color Code the approximate location and the number of subsurface installations that may be affected by the excavation to

the extent and degree of accuracy that the information is available as determined through the use of standard locating techniques or based on the records of the operator.

The operator shall promptly notify the center when the operator has fulfilled the requirements of this section. After receiving this notification from all affected operators, the center shall promptly provide notice to the excavator that all affected operators have fulfilled the requirements of this section.

(b) The excavator shall notify the center of any operator's failure to comply with this section and of the applicable inquiry identification number. [L 2004, c 141, pt of §1]

[§269E-10] Commencement of excavation. The center shall not prohibit an excavator from beginning excavation work:

- (1) After receiving notice that all affected operators have fulfilled the requirements of section 269E-9; or
- (2) Five working days after the excavator provides notice of the excavation to the center pursuant to section 269E-7(a); provided that this subsection shall not be construed as affording the excavator any immunity or protection from claims for damages or injuries relating to the excavation. [L 2004, c 141, pt of §1]

[§269E-11] Remarking of operator's subsurface

installation. (a) The excavator shall take reasonable care to maintain an operator's field markings.

(b) If at any time during an excavation for which there is a valid inquiry identification number an operator's field markings are no longer reasonably visible, the excavator shall shut down the excavation and contact the center and request remarking of the subsurface installations. The center shall, on the same day, contact the operator and request remarking.

(c) Upon receiving timely renotification pursuant to this section, the operator shall within five working days, and to the extent necessary, remark those subsurface installations that may be affected by the excavation in conformance with section 269E-9(a)(4). The operator shall promptly notify the center when the requirements of this section are fulfilled.

(d) The excavator may continue excavation:

(1) After the center notifies the excavator that the operator has fulfilled the requirements of section 269E-11(c); or

(2) Five working days after the excavator requests remarking pursuant to section 269E-11(b); provided that this subsection shall not be construed as affording the excavator any immunity or protection from claims for damages or injuries relating to the excavation.

(e) If the excavator maintains the operator's field markings, then the excavator, when extending a location request ticket through the center, shall not request the operator to remark the operator's subsurface installations.

(f) The excavator shall notify the center of any operator's failure to comply with this section and of the applicable inquiry identification number.

(g) This section shall not apply to operators who comply with section 269E-9(a)(1), (2), or (3). [L 2004, c 141, pt of §1]

[§269E-12] Excavation procedures. (a) The excavator shall exercise reasonable care when excavating in the vicinity of a subsurface installation.

(b) Before using any power-operated or power-driven excavating equipment, the excavator shall determine the exact location of subsurface installations in conflict with the excavation by first excavating down to the depth of the excavation with the appropriate hand tools within the area of the approximate location of the subsurface installations; provided that power-operated or power-driven excavating may be used:

- (1) For the removal of any existing pavement if there are no subsurface installations contained in the pavement;
or
- (2) Within the approximate location of a subsurface installation by mutual agreement between the operator and the excavator.

(c) If after making every reasonable effort to locate the subsurface installation, the excavator cannot determine the exact location by hand excavation as set forth in subsection (b), the excavator shall request that the operator provide additional information through the center to locate the subsurface installation. The operator, within two working days, shall provide any information that is available to the operator to aid the excavator in determining the exact location.

(d) If after making every reasonable effort to locate the subsurface installation with the additional information provided pursuant to subsection (c) the excavator still cannot determine the exact location of the subsurface installation by hand excavation, the excavator shall notify the center. The center shall then:

- (1) Require the operator to determine the exact location of the operator's subsurface installation with appropriate hand tools; or
- (2) Allow the excavator to use powered equipment to continue the excavation, with or without on-site supervision by the operator; provided that this subsection shall not be construed as affording the excavator any immunity or protection from claims for damages or injuries relating to the excavation.

(e) Each excavator responsible for any excavation that results in contact with, exposure of, or damage to a subsurface installation, before continuing excavation in the immediate area of the subsurface installation shall:

(1) Immediately notify the operator of the location and nature of the damage and undertake any reasonable measures as requested by the operator; and

(2) Allow reasonable time, consistent with industry practice, for any necessary repairs to be made to the subsurface installation.

(f) If the damage to a subsurface installation creates an emergency situation, the excavator shall:

(1) Immediately notify the enhanced 911 emergency service and the operator of the facility; and

(2) Minimize the hazard until the arrival of the enhanced 911 emergency service authority or the operator. [L 2004, c 141, pt of §1]

[§269E-13] Excavation permits. Prior to conducting an excavation, the excavator shall obtain all necessary permits from the appropriate agency or agencies pursuant to the laws, rules, regulations, procedures, and requirements governing the issuance of such permits. [L 2004, c 141, pt of §1]

[§269E-14] Penalties. (a) An action for the enforcement of penalties pursuant to this chapter shall be brought before the commission by the State, county, excavator, or any operator.

(b) Any excavator or operator who negligently violates, neglects, or fails in any particular instance to conform to or comply with any requirement of this chapter or any order or rule of the commission:

(1) Shall be subject to a civil penalty not to exceed \$5,000 per day for each day such violation, neglect, or failure continues, to be assessed by the commission after a hearing in accordance with chapter 91; provided that the maximum penalty for related violations arising out of the same act, omission, or occurrence shall not exceed \$100,000; and

(2) May be required, at the expense of the violator, to participate in an educational program conducted by the center; provided that any excavator who negligently violates section 269E-7(a) shall be required, at the expense of the excavator, to participate in an educational program conducted by the center.

(c) Upon written application filed within fifteen days after service of an order imposing a civil penalty pursuant to this section, the commission may remit or mitigate such penalty upon such terms as it deems proper. In determining whether such penalty should be remitted or mitigated, the commission may consider:

(1) The gravity of the violation;

(2) Whether the excavator or operator charged with the violation attempted in good faith to comply with this chapter, before and after notification of the violation; and

(3) Any history of previous violations of this chapter by the operator or excavator.

(d) If any penalties imposed pursuant to this section are not paid or complied with within such period as the commission may direct, the attorney general shall institute a civil action in circuit court for compliance of the same.

(e) In addition to civil penalties imposed, the nonprevailing party shall reimburse the prevailing party for legal fees and costs incurred by the prevailing party.

(f) Notwithstanding any other law to the contrary, this chapter shall not affect any remedies, civil or criminal, otherwise provided by law. This chapter, and compliance therewith, shall not be construed as altering or mitigating any liabilities, responsibilities, or obligations imposed by law, rule, agreement, or contract, or as affording any immunity or protection from claims for injuries or damages relating to the excavation. This chapter does not expressly transfer, and shall not be deemed to imply the transfer of, any liability between operators and excavators. No insurance policy shall provide coverage for any civil penalties imposed under this chapter. [L 2004, c 141, pt of §1]

[§269E-15] Hearings. (a) All hearings, investigations, and proceedings shall be governed by this section, chapter 91, and by rules of practice and procedure adopted by the commission, and in the conduct thereof, the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision, or rule made, approved, or confirmed by the commission.

(b) Complaints may be made, in writing, by the commission on its own motion or by the State, county, excavator, or any operator, setting forth any act or thing done, or omitted to be done by any excavator or operator in violation or claimed to be in violation, of any requirement of this chapter or of any order or rule of the commission.

(c) All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties. In any review by the courts of orders or decisions of the commission, the same rule shall apply with regard to the joinder of causes and parties as herein provided. The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

(d) Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the operator or excavator complained of. Service in all hearings, investigations, and proceedings pending before the commission may be made upon any person upon whom a summons may be served in any proceeding before the courts of this State, and may be made personally or by mailing in a sealed envelope, registered or certified, with postage prepaid. The commission shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof, not less than fifteen days before the time set for the hearing.

(e) At the time fixed for any hearing before the commission or the time to which the hearing has been continued, the complainant and the person complained of, and such persons as the commission allows to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses. After the conclusion of the hearing, the commission shall make and file its order, containing its decision which shall be based on findings of fact and conclusions of law therein stated. A copy of each order shall be served upon the person complained of, or the person's attorney.

(f) A complete record of all proceedings and testimony before the commission on any formal hearing shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney.

In case of an action to review an order or decision of the commission, a transcript of the testimony, together with all exhibits or copies thereof introduced, and of the pleadings, records, and proceedings in the cause, shall constitute the record of the commission, but the party or parties to the proceeding and the commission may stipulate that designated parts of the record need not be transmitted to the appellate court, as provided by the rules of the court. [L 2004, c 141, pt of §1]

[§269E-16] Reconsideration and rehearings. After any order or decision has been made by the public utilities commission, any party to the proceeding may apply once for reconsideration or a rehearing in respect to any matter determined in the proceeding and specified in the motion for reconsideration or rehearing. The motion for reconsideration or a rehearing shall be filed within ten days after the decision and order has been served and shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful. No person shall in any court urge or rely on any ground not so set forth in the motion. A motion for reconsideration or rehearing shall not excuse any person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs.

If, after reconsideration or rehearing the commission is of the opinion that the original order or decision, or any part thereof, is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify it. The order or decision abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the commission. [L 2004, c 141, pt of §1]

[§269E-17] Appeals. From the order made on an application for reconsideration or rehearing by the public utilities commission under this chapter, an appeal shall lie in the manner provided in section 269-15.5. [L 2004, c 141, pt of §1]

ADMINISTRATIVE RULES

On January 9th, 2012, the Hawaii Department of Budget and Finance adopted Chapter 6-83, Hawaii Administrative Rules. These rules further define the rights and responsibilities of excavators and facility operators within the state as well as establish the operating procedures that the Hawaii Public Utilities Commission will use to enforce Chapter 269E, including the issuance of civil penalties to persons and entities found guilty of violating Chapter 269E. The full document can be viewed at the Hawaii PUC web site www.puc.hawaii.gov

The following is the index of Title 6, Chapter 83 for your reference:

HAWAII ADMINISTRATIVE RULES
TITLE 6
DEPARTMENT OF BUDGET AND FINANCE
CHAPTER 83
HAWAII ONE CALL CENTER SUBSURFACE INSTALLATION
DAMAGE
PREVENTION PROGRAM

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- §6-83-1 Purpose of chapter
- §6-83-2 Application additional sources
- §6-83-3 Definitions
- §6-83-4 Severability
- §§6-83-5 to 6-83-20 (Reserved)

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- §6-83-21 Hours of operation
- §6-83-22 Statewide toll free telephone access number; 811
- §6-83-23 Verification of data and map Submittals
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§6-83-100 Formal complaints

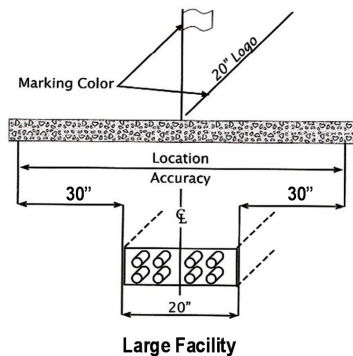
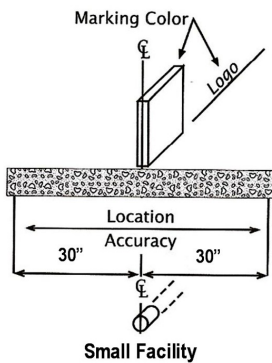
§6-83-101 Answer to formal complaints

§6-83-102 Motion to dismiss or to make more
definite and certain

§6-83-103 Hearing on formal complaints

§§6-83-104 to 6-83-120 (Reserved)

Tolerance Zone



American Public Works Association

Color Code

RED	Electric Power Lines, cables or conduits, and lighting cables.
YELLOW	Gas, Oil, Steam, Petroleum, other hazardous liquid or gaseous materials.
ORANGE	Communications, cable TV, alarm or signal lines, cables or conduits.
BLUE	Water, irrigation, and slurry lines.
GREEN	Sewers, storm sewer facilities, or other drain lines.
WHITE	Proposed excavation.
PINK	Temporary survey markings.
PURPLE	Reclaimed water, irrigation, and slurry lines.

