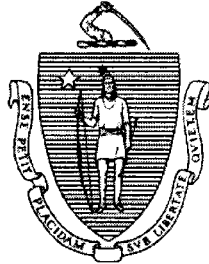


To the Joint Committee on Public Safety and Homeland Security, the Senate Committee on Ways and Means, and the House Committee on Ways and Means of the Massachusetts General Court
August 15, 2024



COMMISSIONER OF THE DIVISION OF
OCCUPATIONAL LICENSURE

In conjunction with the
DEPARTMENT OF LABOR STANDARDS

ANNUAL REPORT ON FINES IMPOSED, COLLECTED AND
EXPENDED PURSUANT TO G.L. c. 82A, § 1
(EXCAVATION AND TRENCH SAFETY)

Acknowledgements

This annual report was prepared by the staff of the Office of Public Safety and Inspections (OPSI), in conjunction with the Department of Labor Standards, pursuant to G.L. c. 82A, § 1 which states in relevant part: “The office of public safety and inspections of the division of occupational licensure, in conjunction with the department of labor and workforce development, shall file a report detailing the amount of fines imposed, collected and expended pursuant to this section with the house and senate committees on ways and means and with the joint committee on public safety and homeland security not later than August 15 of each year.”

Statutory and Regulatory Requirements

Commencing in January 2009, all excavators are required to obtain a permit prior to the creation of a trench made for a construction-related purpose on public or private land or rights-of-way in accordance with Chapter 82A of the Massachusetts General Laws. Further, all municipalities are required to establish a local permitting authority for the purpose of issuing these permits, with the designation of the local permitting authority left to the discretion of the individual municipalities. In addition to the permit and local permitting authority requirements mandated by statute, the trench safety regulations require that all excavators, whether public or private, take specific precautions to protect the general public and prevent unauthorized access to unattended trenches.

The statute further mandates that the Office of Public Safety and Inspections (OPSI) within the Division of Occupational Licensure draft trench safety regulations in conjunction with the Department of Labor Standards, “DLS”). These are codified in section 14.00 of title 520 of the Code of Massachusetts Regulations.

Enforcement

As a practical matter, the enforcement of the regulations is almost exclusively done at the municipal level which is responsible for the issuance of permits and is authorized to take administrative action on those permits. The OPSI is authorized to assess administrative fines for violations and has requested that municipalities refer appropriate cases to the OPSI for a fine hearing following action taken on a permit.

During FY 2024, the DLS conducted 22 Trench inspections and/or interventions; 25 construction site, DPW, or other inspections where trench safety was discussed; and 18 trench safety training sessions where trench safety may be part of a larger training presentation and not the sole subject. Total attendance for trench safety training sessions conducted by DLS was 3,113 attendees, and trench safety literature was distributed at 200 job sites and exhibit halls as part of those presentations.

DLS was active in enforcing trench safety in FY2024. The DLS Workplace Safety and Health Program conducted 8 site inspections or interventions at public sector job sites and issued corrective actions to prevent cave-ins and other trench accidents. In the private sector workplaces, the DLS Workplace Safety and Health Program conducted 10 construction site consultations which included a discussion on trench safety, assessment of existing trenches, OSHA standards, and evaluation of trench safety programs. DLS also intervened at another 8 public sector and 17 private sector work sites where an active trench was located without all the required safety precautions in place.

The OPSI performed 42 unannounced compliance inspections across the commonwealth to ensure adherence to 520 CMR 14.00 pertaining to unattended trench safety as well as 520 CMR 6.00 concerning hoisting machinery operation. In most instances, OPSI inspectors found that excavators were appropriately licensed and unattended trench safety measures were understood and instituted as prescribed by 520 CMR 14.00. Where matters were not well understood, OPSI inspectors took time to reference regulatory requirements and emphasize the importance of barriers and other safety measures. Unattended trench safety regulatory infractions discovered during compliance inspections were minor and did not warrant fines or administrative penalties. Rather, compliance inspections were successfully used as a tool to help promote program safety measures.

However, there were 5 investigations of complaints of unattended trenches resulting in 3 violations being issued which totaled \$5000.00 in fines. Of these complaints 2 were determined to be unfounded as the excavation did not meet the definition of a trench because the measurement at the bottom was greater than 15 feet in all directions or the depth was less than 3 feet.

Budget

The Open Trenches and Excavations Trust (8311-2872) began Fiscal Year 2024 with a balance of \$4,710.13. The current balance is \$7,710.13. During Fiscal Year 2024, the Trust received \$3,000.00 due enforcement action. The Trust paid out \$0.00.

Training

OPSI and DLS conducted 3 in-person training sessions to 120 attendees. These were conducted at North Shore Community College on February 29, 2024, Springfield Technical Community College on March 13, and Cape Cod Community College on March 15, 2024.

DLS On-site Consultation performed 3 OSHA 10-Hour Construction courses where trenching and excavation was covered as a topic. These were conducted in Hyannis on October 24-25, 2023 for 20 attendees, in Attleborough on February 27-28, 2024 for 14 attendees, and in Worcester on April 1-2, 2024 for 22 attendees.

OPSI and DLS continued their cooperative alliance with the New England Water Works Association (NEWWA). NEWWA holds a four-day trench competent person training three times a year. DLS provides training on OSHA trench and excavation regulations and what happens during a DLS safety inspection, and OPSI provides training on Massachusetts regulations 520CMR6 hoisting and 520CMR14 excavation and trench safety.

DLS conducted in-person training and outreach for municipal public works employees by presenting at the Digsafe's Managing Underground Safety Training (MUST) at the Barnstable County Public Works Association, New England Water Works Association, and Worcester County Highway Association. Including webinars, over 1600 public and private sector employees attended. These events were held in Hyannis on February 13, 2024, Westport on February 14, 2024, Agawam on February 15, 2024, Pittsfield on February 16, 2024, Framingham on February 27, 2024, Fitchburg on February 28, 2024, Foxborough on February 29, 2024, and Danvers on March 5, 2024.

DLS distributed trenching and excavation handouts at 4 conferences where municipal employees were in attendance and hand delivered 35 packets of safety information, including trenching and excavation safety, to public works departments and town halls. Conferences included the New England Public Works Expo and Massachusetts Municipal Association conferences.

OPSI conducted 3 training sessions to the American Rental Association of Massachusetts which included excavation and trench safety for renters of compact equipment utilizing a temporary permit issued by OPSI. These were held on March 5, 2024 in Sturbridge, March 6, 2024 in Woburn, and March 7, 2024 in Taunton.

Outreach

OPSI continues to communicate with municipal authorities, excavators and others through *Constant Contact* messaging to emphasize the importance of trench and other matters of public safety and OPSI\DLS continue to respond to phone calls and e-mails regarding trench safety, jointly addressing questions and concerns of interested parties. Finally, in January 2018 DLS joined the emergency management notification list developed by OPSI to refer trench incidents to DLS and OSHA. Through this communication channel OPSI informs DLS regarding potential trench safety violations for public sector worksites. Likewise, DLS refers potential hoist violations to OPSI for evaluation and follow-up.

Conclusion

The OPSI and DLS continue to regulate and enforce excavation and trench safety pursuant to their responsibilities under G.L. c. 82A. Over the course of the last year, the two agencies performed substantial training and outreach activities in order to facilitate stakeholder compliance and understanding of statutory and regulatory obligations. The OPSI and DLS will continue to engage stakeholders in the coming year in their ongoing effort to promote excavation and trench safety for all affected parties.