



December 18, 2023

Mary Beth Fazzari  
Manager (A), Regulatory Policy and Oversight Unit  
Policy, Planning and Oversight Division  
Ministry of Public and Business Service Delivery  
56 Wellesley St. West, 6th floor  
Toronto, ON M7A 1C1

*Sent electronically*

**RE: 23-MPBSD014– Proposed Legislative Amendments to the *Ontario Underground Infrastructure Notification System Act, 2012* under the *Building Infrastructure Safely Act, 2023***

On behalf of our collective construction industry members, we appreciate the opportunity to provide commentary on the proposed legislative amendments. Our organizations have been engaged on this file for over a decade and have provided significant and comprehensive feedback to government during this time.

As the items discussed below are part of the underground utilities locate system in Ontario, which is currently undergoing multiple regulatory and legislative proposals, we want to highlight that the commentary we provide regarding Bill 153 *Building Infrastructure Safely Act*, must be considered alongside our [November 16, 2023 submission](#) (Appendix A) on the draft regulatory proposal to provide a longer locate timeline for large projects under the *One Call Act*.

We agree with Bill 153's proposal to prohibit underground infrastructure owners and operators from charging a fee for locates. However, it is important to note that prohibiting underground infrastructure owners and operators from charging a fee for locates/relocates is keeping Ontario in line with every other jurisdiction in North America. The industry views this as status quo approach that has been the norm since the *Ontario Underground Infrastructure Notification System Act* came into effect.

We find it difficult to offer fulsome commentary regarding the Bill's proposal to remove the excavator recourse provision of the *One Call Act* that entitles excavators to compensation and recourse through the Ontario Land Tribunal against underground infrastructure owners and operators for failing to provide a locate within the legislated time limit. It is challenging to comment given the lack of clarity we have on administrative penalties and their application.

This reflects a wider concern that industry has in terms of firm and consistent accountability measures that locate providers are held to for delivering locates within the legislated timeline.



For industry, predictability of locate delivery is of paramount importance, particularly given the significant financial, workforce and social implications of late delivery locates.

It is incumbent upon Ontario One Call to ensure that it develops and executes those accountability measures, such as Administrative Monetary Penalties (AMPs), going forward. The spirit of AMPs was to “strengthen Ontario One Call’s enforcement and compliance framework by providing an additional tool for it to use to promote compliance with the *One Call Act*”. Industry is incredibly concerned that Ontario One Call has consistently and repeatedly been on the record over the last year emphatically stating that they never intended to apply AMPs toward their members for late locate delivery but would rather focus on educating members on their responsibilities.

Given this, as well as the fact that Ontario One Call has never issued a penalty for late locates in the province, industry would like to see automatic AMPs for late locates in Ontario. Understanding that there may be exigent circumstances, we propose that renegotiated delivery dates can take place, if both parties agree to it. This would build on a current practice within the Ontario One Call system that allows locate delivery dates to be renegotiated once a locate request has been submitted.

Automatic AMPs can be used to incentivize locate delivery providers to improve on their locate delivery timelines. For example, based on Enbridge Gas Distribution locate delivery performance report for [August 2023](#) (Appendix B), it delivered 33,152 locates in that month with 417 of those locates taking over 10 days to be delivered. These 417 late locates represent 1.25 percent of all August locates, which is an appropriate percentage to apply AMPs on as it will incentivize the locator to improve upon its already strong reported performance.

Furthermore, based on the compliance reports for 2023 that have been submitted to Ontario One Call, we propose that the current legislated delivery timeframes remain at five days, but that automatic AMPs be applied after ten days. Given that locates delivered past ten days appear to be a small percentage of reported late locates in Ontario, the need to extend the legislated timeframe is not necessary. Rather, the focus should be on ensuring that incentives are in place to get that small percentage of 10+ day late locates delivered on time.

One of the principles that industry has consistently been focused on is reducing the overall volume of locates in the system. We have provided the Ministry and Government of Ontario with several key elements of how this can be accomplished. These include:

*A. Eliminate the need for relocates on non-linear excavation construction sites*

Presently, companies on long-term, vertical excavation projects are required to call and receive relocates every 60 days. However, below a certain depth these relocates



are unnecessary. The need for relocates should be eliminated once all utilities have been exposed and the general depth of excavation is one metre below the invert of the lowest utility. We look forward to consultations in 2024 on this item.

*B. Expand locate validity period*

Dedicated locators are permitted to extend locate validity period beyond 60-days. There are many existing, low-risk opportunities where this should be permitted and encouraged (i.e., point A with deep excavations). Industry would also recommend that private developers use dedicated locator on appropriate projects and recommend for the extension of validity period where practicable. We look forward to consultations in 2024 on this item.

*C. Utilize and maximize the dedicated locator model*

Dedicated locator can help utility companies address some of their operational cost concerns, though most municipalities and private owners do not understand the model fully and how it would be operationalized. The Government of Ontario and Ontario One Call must develop a comprehensive, easy-to-understand communications and outreach campaign to ensure that industry and municipalities can utilise the dedicated locator model to its full extent.

*D. Simplify the sharing of locates among multiple contractors for the same job*

Although the regulations currently allow for sharing, each contractor's name must be on the locate documents. One Call's current web based locate request system has a field for only one contractor. As such, the program should be updated to add a drop-down field for additional contractors.

*E. Create a Certified Locator Training Course*

Lead the creation of a certified training program to allow excavation companies to train existing employees to refresh/remark/relocate on their own projects safely and legally. It is critical to note that this training program should not be included in the 144 existing skills trade classifications in the province of Ontario. Rather, this should be a training program recognized by utility owners to allow construction companies to train their own workers to locate utilities safely and legally, which will help reduce wait times for locators.

We hope that our concerns and recommendations outlined above are given full considerations. Timely and predictable delivery of locates are essential to critical infrastructure and housing



projects across the province, and we will remain involved in improving this vital system for the benefit of all Ontarians.

Respectfully,

Nadia Todorova  
Executive Director  
RCCAO

Patrick McManus  
Executive Director  
OSWCA

Raly Chakarova  
Executive Director  
TARBA

Peter Smith  
Executive Director  
HCAT

Richard Lyall  
President  
RESCON

Copy to:

- Patrick Sackville, Chief of Staff to the Premier
- Rahul Bedi, Deputy Chief of Staff & Head of Policy, Office of the Premier of Ontario
- Kevin Lynch, Director of Policy, Office of the Premier of Ontario
- Michelle Stock, Chief of Staff, Minister's Office, Ministry of Public and Business Service Delivery
- Joshua Workman, Chief of Staff, Minister's Office, Ministry of Transportation
- Luca Campagna, Director of Stakeholder Relations, Minister's Office, Ministry of Transportation
- Adam Cotter, Director of Stakeholder Relations, Minister's Office, Ministry of Infrastructure
- Alex Piccini, Director of Stakeholder Relations, Minister's Office, Ministry of Public and Business Service Delivery

# APPENDIX A



November 16, 2023

Mary Beth Fazzari  
Manager (A), Regulatory Policy and Oversight Unit  
Policy, Planning and Oversight Division  
Ministry of Public and Business Service Delivery  
56 Wellesley St. West, 6th floor  
Toronto, ON M7A 1C1

*Sent electronically*

**RE: 23-MPBSD013 – Consultation on a draft regulation proposal to specify large project locate requests under the *Ontario Underground Infrastructure Notification System Act, 2012***

On behalf of our collective construction industry members, we appreciate the opportunity to provide commentary on the proposed regulation. Our organizations have been engaged on this file for over a decade and have provided significant and comprehensive feedback to government as part of countless consultations, regulatory proposals, roundtables, and other consultation avenues.

We are disappointed and disconcerted by the Ministry's proposal to double the time limits for completing locates in Ontario. The proposal represents an egregious step back for locate delivery in the province and makes Ontario's locate delivery timelines, which are already one of the longest in North America at five business days, a significant impediment to getting shovels in the ground on critical infrastructure and housing projects. Rather than address long standing root issues in Ontario's locate delivery system, this proposal admits the system is broken and rewards the consistent failures to meet legislated timelines by utility providers at the expense of the timely delivery of desperately needed housing and infrastructure.

We strongly urge the Ministry and Government of Ontario to consider the below points before implementing this proposed regulation:

**1) Predictability and Accountability**

Given the significant financial, workforce and social implications of late delivery locates, it is key that industry has predictability. Regardless of what the legislated delivery timeline is, it is imperative that industry can count on locates being issued and available in a predictable and consistent manner. Equally important is that locate providers be held to firm and consistent accountability measures to ensure they are compliant and delivering locates within the legislated timeline.



It is incumbent upon Ontario One Call to ensure that it develops and executes those accountability measures, such as Administrative Monetary Penalties (AMPs), going forward. The spirit of AMPs was to “strengthen Ontario One Call’s enforcement and compliance framework by providing an additional tool for it to use to promote compliance with the *One Call Act*”. Industry is incredibly concerned that Ontario One Call has consistently and repeatedly been on the record over the last year emphatically stating that they never intended to apply AMPs toward their members for late locate delivery but would rather focus on educating members on their responsibilities.

## 2) Defining “large” infrastructure projects

The current proposal is aimed at “large” infrastructure projects, whose parameters we understand to be excavations or dig projects measuring more than 600m<sup>2</sup> in area or more than 600 linear metres in length at a single property or multiple contiguous properties. These parameters are too small in scope and will effectively capture the majority of infrastructure projects in Ontario.

We would recommend that the parameters be increased to 1500m<sup>2</sup> to effectively reflect the spirit of this proposal of capturing “large” infrastructure projects.

## 3) Locate Request Notice Period

The additional parameter being considered as part of this proposal to require “large” projects provide advance notification of 20-30 business days before digging is unreasonable and at odds with the realities of how construction projects are tendered across Ontario. This would, in effect, increase the locate delivery timeline to 30-40 days for initial locates on large projects, based on other elements of this proposal. Oftentimes, contractors do not get more than a week’s notice from the public owner regarding a project being awarded and the commencement of the project. Thus, this proposal is unworkable and will only serve to enhance the issues around predictable and timely locates for critical infrastructure projects.

## 4) Reducing the Volume of Locate Requests

One of the principles that industry has consistently been focused on is reducing the overall volume of locates in the system. We have provided the Ministry and Government of Ontario with several key elements of how this can be accomplished, and we are frustrated that there has been lack of momentum on these important initiatives. These include:

### A. *Eliminate the need for relocates on non-linear excavation construction sites*

Presently, companies on long-term, vertical excavation projects are required to call and receive relocates every 60 days. However, below a certain depth these relocates are unnecessary. The need for relocates should be eliminated once all utilities have



been exposed and the general depth of excavation is one metre below the invert of the lowest utility.

*B. Expand locate validity period*

Dedicated locators are permitted to extend locate validity period beyond 60-days. There are many existing, low-risk opportunities where this should be permitted and encouraged (i.e., point 4A with deep excavations). Industry would also recommend that private developers use dedicated locator on appropriate projects and recommend for the extension of validity period where practicable.

*C. Utilize and maximize the dedicated locator model*

Dedicated locator can help utility companies address some of their operational cost concerns, though most municipalities and private owners do not understand the model fully and how it would be operationalized. The Government of Ontario and Ontario One Call must develop a comprehensive, easy-to-understand communications and outreach campaign to ensure that industry and municipalities can utilise the dedicated locator model to its full extent.

*D. Simplify the sharing of locates among multiple contractors for the same job*

Although the regulations currently allow for sharing, each contractor's name must be on the locate documents. One Call's current web based locate request system has a field for only one contractor. As such, the program should be updated to add a drop-down field for additional contractors.

*E. Create a Certified Locator Training Course*

Lead the creation of a certified training program to allow excavation companies to train existing employees to refresh/re-mark/relocate on their own projects safely and legally. It is critical to note that this training program should not be included in the 144 existing skills trade classifications in the province of Ontario. Rather, this should be a training program recognized by utility owners to allow construction companies to train their own workers to locate utilities safely and legally, which will help reduce wait times for locators.

While industry recognizes that this file has its unique complexities, we cannot help but feel frustrated with this proposal and the setback it represents from the positive momentum that government was able to establish through Bill 93. We hope that our concerns and recommendations outlined above are given full considerations.





Implementing the proposed regulation without serious revisions will have devastating practical consequences for critical infrastructure and housing projects across Ontario. It will also serve as a significant optical stain on the province's economic vitality and competitiveness in North America.

Respectfully,

Nadia Todorova  
Executive Director  
RCCAO

Patrick McManus  
Executive Director  
OSWCA

Raly Chakarova  
Executive Director  
TARBA

Peter Smith  
Executive Director  
HCAT

Walid Abou-Hamde  
Executive Director  
ORBA

Copy to:

- Patrick Sackville, Chief of Staff to the Premier
- Rahul Bedi, Deputy Chief of Staff & Head of Policy, Office of the Premier of Ontario
- Kevin Lynch, Director of Policy, Office of the Premier of Ontario
- Michelle Stock, Chief of Staff, Minister's Office, Ministry of Public and Business Service Delivery
- Joshua Workman, Chief of Staff, Minister's Office, Ministry of Transportation
- Luca Campagna, Director of Stakeholder Relations, Minister's Office, Ministry of Transportation
- Alex Piccini, Director of Stakeholder Relations, Minister's Office, Ministry of Public and Business Service Delivery

# APPENDIX B



# Locate Delivery Performance

Start Date   
 End Date

	Compliant	Non-Compliant	Non-Compliant No Response
Subtotal	333,932	27,362	16,171
	88.47%	7.25%	4.28%
Actionable Requests	377,465		

## Member

Completed within	Compliant		Non-Compliant		Non-Compliant No Response	
B   6-10			45	10.30%	32	7.32%
C   11-15			33	7.55%		
D   16+			38	8.70%	28	6.41%
A   0-5	261	59.73%				
Subtotal	261	59.73%	116	26.54%	60	13.73%
Actionable Requests	437					

### 2390541 Ontario Inc.

Completed within	Compliant		Non-Compliant		Non-Compliant No Response	
D   16+					2	100.00%
Subtotal	0		0		2	100.00%
Actionable Requests	2					

### 2825784 Ontario Inc.

Completed within	Compliant		Non-Compliant		Non-Compliant No Response	
A   0-5	3	100.00%				
Subtotal	3	100.00%	0		0	
Actionable Requests	3					

### 407 ETR Concession Company Limited

Completed within	Compliant		Non-Compliant		Non-Compliant No Response	
A   0-5	31	30.10%				
B   6-10			21	20.39%		
D   16+			4	3.88%	47	45.63%

# Member

A   0-5	60	84.51%				
B   6-10			6	8.45%		
C   11-15			2	2.82%		
D   16+					3	4.23%
Subtotal	60	84.51%	8	11.27%	3	4.23%

Actionable Requests 71

## Emerald Energy from Waste Inc

Completed within	Compliant		Non-Compliant		Non-Compliant No Response	
D   16+					4	100.00%
Subtotal	0		0		4	100.00%

Actionable Requests 4

## Emo, Township of

Completed within	Compliant		Non-Compliant		Non-Compliant No Response	
D   16+					2	33.33%
A   0-5	4	66.67%				
Subtotal	4	66.67%	0		2	33.33%

Actionable Requests 6

## Enbridge Gas (Legacy Union Gas)

Completed within	Compliant		Non-Compliant		Non-Compliant No Response	
A   0-5	27,342	95.21%				
B   6-10			625	2.18%	101	0.35%
C   11-15			205	0.71%	22	0.08%
D   16+			141	0.49%	283	0.99%
Subtotal	27342	95.21%	971	3.38%	406	1.41%

Actionable Requests 28719

## Enbridge Gas Distribution

Completed within	Compliant		Non-Compliant		Non-Compliant No Response	
A   0-5	33,152	87.28%				
B   6-10			1184	3.12%	39	0.10%
C   11-15			250	0.66%	29	0.08%
D   16+			167	0.44%	3161	8.32%

# Member

Subtotal	33152	87.28%	1601	4.22%	3229	8.50%
----------	-------	--------	------	-------	------	-------

Actionable Requests	37982					
---------------------	-------	--	--	--	--	--

## Enbridge Gas Distribution - Vital Mains

Completed within	Compliant		Non-Compliant		Non-Compliant No Response	
D   16+			17	1.44%	18	1.53%
A   0-5	1,066	90.42%				
B   6-10			49	4.16%	4	0.34%
C   11-15			25	2.12%		
Subtotal	1066	90.42%	91	7.72%	22	1.87%

Actionable Requests	1179					
---------------------	------	--	--	--	--	--

## Enbridge Gas Distribution (Gas Storage)

Completed within	Compliant		Non-Compliant		Non-Compliant No Response	
A   0-5	22	100.00%				
Subtotal	22	100.00%	0		0	

Actionable Requests	22					
---------------------	----	--	--	--	--	--

## Enbridge Gas Storage and Transmission (Legacy Union Gas)

Completed within	Compliant		Non-Compliant		Non-Compliant No Response	
B   6-10			3	1.40%		
D   16+					2	0.93%
A   0-5	210	97.67%				
Subtotal	210	97.67%	3	1.40%	2	0.93%

Actionable Requests	215					
---------------------	-----	--	--	--	--	--

## Enbridge NEB Mains

Completed within	Compliant		Non-Compliant		Non-Compliant No Response	
A   0-5	50	90.91%				
B   6-10			2	3.64%		
C   11-15			3	5.45%		
Subtotal	50	90.91%	5	9.09%	0	

Actionable Requests	55					
---------------------	----	--	--	--	--	--

## Enbridge Pipelines

Completed within	Compliant		Non-Compliant		Non-Compliant No Response	
------------------	-----------	--	---------------	--	---------------------------	--