



FAQ's for New Trench Safety Regulations 520 CMR 14.00

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Answers

Q 1. What do the Trench Safety Regulations (520 CMR 14.00) require?

A. Generally, the Trench Safety Regulations require that **unattended** trenches be made safe for the General Public. Pursuant to the regulations enabling statute, [M.G.L. c. 82A](#), the Trench Safety Regulations, included in 520 CMR 14.00, require excavators to obtain a permit prior to creating a trench on public or private property; require excavators to undertake certain safety precautions to make unattended trenches safe for the general public and prevent unauthorized access; and subject excavators to penalties, including fines, for the failure to comply with the regulations. An “unattended trench” is defined as “a trench where neither the permit holder, excavator, or any of the people who work in or at the trench are present.” It is important to note that these regulations require action to be taken by permit holders ahead of time to secure unattended trenches. These regulations do not prescribe worker safety regulations for employees in or at trenches, nor are the regulations intended to protect the general public from hazards inherent in trenches while the trenches are attended.

Q 2. What is a trench?

A. According to [M.G.L. c. 82A, §4](#) and 520 CMR 14.02, a trench is defined as “an excavation which is narrow in relation to its length, made below the surface ground in excess of three feet below grade and the depth of which is, in general, greater than the width, but the width of the trench, as measured at the bottom, is not greater than 15 feet.”

Q 3. Why do the regulations require a permit to create a trench?

A. The regulations require excavators to obtain a permit because the statute requires excavators to obtain a permit. See [M.G.L. c. 82A, §2](#). The permit ensures that the city, town or public agency is aware of trenches being created within its jurisdiction and also ensures that excavators are put on

notice with regard to the safety requirements for trenches because permitting authorities are required to attach summaries of OSHA Regulation 1926 Subpart P-Excavations and the Excavation and Trench Safety Regulations included at 520 CMR 14.00, passed pursuant to [M.G.L. c. 82A](#).

Q 4. What is a permitting authority?

A. A permitting authority is defined within the regulations as “a city, town or public agency required to administer the provisions of 520 CMR 14.03 [Permitting Requirements].” The statute, [M.G.L. c. 82A, §2](#), states that “each city, town, or public agency shall designate 1 board or officer to issue permits for the excavation of trenches on privately owned land and for the excavation of a public way of a city or town.” Under Article 89 of the Massachusetts Constitution, municipalities may choose to enact a by-law or regulation designating the board or officer that will act as the permitting authority for that city or town. While there are no prerequisites for designation as the permitting authority, the Department of Public Safety and the Division of Occupational Safety recommend the delegation to an individual or board/department presumed to have knowledge of excavation safety already, which may include local building officials or the building department; the fire chief or fire department; a DPW supervisor or board; or the city/town engineer.

Q 5. Can a permitting authority divide its responsibilities among various qualified entities or individuals to issue permits? For example, can a city or town designate a board comprised of individuals from various departments as the local permitting authority and give the Local Building Inspector the authority to permit trenches located on private property and the Director of Public Works the authority to permit trenches located on public property?

A. Yes. There is nothing in 522 CMR 14.00 that prohibits the local permitting authority from delegating responsibilities among board members.

NOTE: Permitting Authorities within the Town of Concord are:

- **Public Works**
 - **Engineering Division**
 - **Water/Sewer Division**
- **Heath Department**
- **Building Department**
- **Concord Municipal Light Plant**

Q 6. I am an excavator. Where may I obtain a permit and what is required?

A. Who you obtain the permit from will depend on who owns or, in the case of a state agency, who owns or has care and control of the land on which you wish to make a trench. If the land is owned by a municipality or is private property, then the excavator must obtain a permit from the permitting authority as designated by the city or town. Cities and towns are authorized by statute to charge a reasonable fee for the permit. If the land is owned or controlled by a public agency or a public agency



otherwise has a property interest in the land, such as in the case of an easement, then the excavator must obtain a permit from the permitting authority designated by that state agency.

To obtain a permit, the excavator must submit a completed application; a certificate of insurance indicating general liability coverage of \$100,000 per person and \$300,000 per claim or evidence of self-insurance in an equal amount (pursuant to M.G.L. c. 82A, §2); and the required fee, where applicable. The regulations at 520 CMR 14.03(4) require the excavator to provide the following information on the permit application:

- the Dig Safe number;
- Name & contact information for the permit holder (the person filing for the permit);
- Name and contact information of the excavator (the company performing the excavation);
- Name of the competent person;
- Name of the person(s) performing the excavation of the trench;
- Massachusetts hoisting license number for each person operating hoisting machinery during the excavation;
- Permit expiration date (where applicable);
- Specific location of the trench;
- Name and contact information of the insurer

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Once issued, the permit must be posted in plain view at the trench worksite, such as in the window of a construction trailer.

Q 7. May permitting authorities charge fees for trench permits?

A. Yes. Municipal permitting authorities may charge a reasonable fee to cover the administrative costs of permitting the trench excavation. See [M.G.L. c. 82A, §2](#) and 520 CMR 14.03(6). This fee is at the discretion of the municipality to determine what is reasonable in light of its administrative needs.

Q 8. Can permitting authorities impose time restrictions on issuing permits, such as requiring applicants to apply for the permit at least three days prior the planned excavation?



A. There is no explicit prohibition in the regulations, and the permitting authority is allowed to impose stricter regulations.

Q 9. Are excavators expected to obtain a permit before responding to an emergency, such as a water main break?

A. No. Permits are not required prior to creating a trench in response to an emergency. "Emergency" is defined in 520 CMR 14.02 as "an unforeseen condition in which the safety of the public is in imminent danger because of a threat to life or health or where immediate correction is required to maintain or restore essential public utility service." However, the excavator should complete a permit application with the permitting authority by the next business day, at the latest.

Q 10. I own a large construction company that frequently performs large jobs and may use multiple sub-contractors. I don't always know who the individual operating the excavation equipment or competent person will be at any one time on a complex project that may take several weeks or more, so how am I supposed to complete the permit application?

A. The Department of Public Safety and Division of Occupational Safety anticipate that the scope may vary from project to project. Accordingly, the permitting authority should realize that the specific competent person and person performing the excavation may change on complex projects. Therefore, information may be updated as necessary during the course of the project, provided however, that by pulling the permit, the permit holder impliedly agrees to act reasonably to ensure that up-to-date information is provided to the permitting authority.

Q 11. What are the permitting requirements if I am creating a trench for a project that crosses municipal lines or jurisdictional lines, such as from state-owned land onto private property?

A. You must obtain a permit from each relevant permitting authority.

Q 12. What is a competent person and who on the excavation crew should this person be?

A. A "competent person" is defined in the regulations as: "A person or persons who is capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to people, and who has authorization to take prompt corrective measures to eliminate them. A competent person must be able to demonstrate that he or she has been trained in and is knowledgeable about: soil analysis, the use of protections for the General Public and the requirements of this regulation." See 520 CMR 14.02. The first sentence of the definition is taken directly from OSHA's regulations.

Q 13. What are municipalities and public agencies required to do under the trench regulations?

A. Municipalities and public agencies are required to 1) establish a permitting authority; 2) require permits for the creation of a trench on a public way, public property, or private property located within the municipality; 3) shut down trenches where violations are found; and 4) regulate municipal departments that create trenches. Municipalities or public agencies that act as excavators are not exempt from these regulations and must adhere to the same standards for obtaining a permit and



implementing protections for the General Public required of other excavators. Municipalities and state agencies are ***not*** required to inspect trenches and excavators are not required to “pass” a municipal or state inspection to be allowed to receive a trench permit. Nevertheless, when permitting authorities, the DOS, or the DPS are put on notice of a potential violation of Chapter 82A or 520 CMR 14.00, they are authorized to investigate the possible violation and take action where a violation is determined to exist. Actions that municipal permitting authorities may take include immediately shutting down a trench site where a violation is found. Permitting authorities may further suspend or revoke a permit following the opportunity for an administrative hearing.

Q 14. Are municipalities required to notify the Department of Public Safety when they issue permits?

A. No. Municipalities are not required to notify the Department each time a permit is issued and in fact should ***not*** do this. State entities, such as Mass Highway, DCAM etc are required by the regulations to notify the Department each time a permit is issued but municipalities are not. The Department is, however, asking Municipalities to notify the Department whenever administrative action, such as a revocation of the permit, is taken by the municipality. Please see question #15 below.

Q 15. Are state agencies required to notify the Department of Public Safety after the issuance of a trench permit?

A. Yes. State agencies must notify the Department after the issuance of a trench permit. The notification form may be accessed [here](#).

Q 16. Should the permitting authority notify the Department of Public Safety after administrative action is taken by the permitting authority?

A. Yes. The Department requests that permitting authorities notify the Department of administrative action.

Q 17. What are the safety precautions that I must take as an excavator?

A. Whenever a trench will be ***unattended*** an excavator must take measures to provide adequate protections for the general public that will prevent unauthorized access to the unattended trench. According to 520 CMR 14.02, an “unattended trench” is “a trench where neither the permit holder, excavator, nor any of the people who work in or at the trench are present.” When a trench is going to be unattended, excavators may choose one of 4 options to make the trench safe:

- erect a fence that is at least 6’ tall with openings no greater than 4” between vertical supports;
- use a roadplate that is at least 3/4” thick steel;
- post an attendant such as a police detail or flag man at the trench; or
- backfill the trench before leaving.



Q 18. I own a private construction company that already adheres to the OSHA requirements for protecting my employees' safety when they work in trenches. Aren't these Trench Safety regulations redundant?

A. No. OSHA's regulations apply to worker safety and require the use of a "protective system" such as a trench box or shoring to protect employees working inside the trench from cave-ins of the soil walls. The new trench regulations do not regulate worker safety, they are public safety regulations. The Excavation and Trench Safety regulations at 520 CMR 14.00 regulate protections that construction companies, municipalities, state agencies, or any person that creates a trench must adhere to for the purpose of protecting the General Public. Moreover, while OSHA's regulations apply while workers are present in, at, or around the trench, the regulations at 520 CMR 14.00 apply when the trench is unattended. By definition, an "unattended trench" is one where workers are not present in or at the trench.

Q 19. Can a ¾ inch thick piece of plywood be used to cover the trench?

A. No. Pursuant to 520 CMR 14.04, "where covers are used they shall be comprised of steel metal plates no less than ¾ inches thick or equivalent.

Q 20. What is considered equivalent to a ¾ inch steel plate?

A. A cover equivalent to a steel metal plate must be able to withstand the same load as a ¾ inch steel plate.

Q 21. Is there a minimum width for an excavation to be covered under the law?

A. No. The regulations provide that the "width of the trench, as measured at the bottom, is no greater than 15 feet," however, there is no minimum width. See 520 CMR 14.02.

Q 22. Are homeowners or individuals excavating a trench on their own property required to obtain a trench permit?

A. Yes. Pursuant to Chapter 82A, Section 2, "no person shall, except in an emergency, contract for the making of or make a trench, in any public way, public property, or privately owned land until a permit is obtained from the appropriately designated person within the city, town, or public agency that is authorized to issue the permit." Therefore, trenches constructed on private property do require a trench permit.

Q 23. Are homeowners or individuals using hoisting machinery to excavate on their own property required to obtain a hoisting license?

A. Yes. The hoisting machinery regulations require individuals renting hoisting machinery to obtain a **temporary license** from the rental company, receive one (1) hour of training from the company and allow a fourteen (14) consecutive day rental period. See 520 6.05(11). Therefore, homeowners using hoisting machinery must obtain a temporary hoisting license as well as a trench permit for the construction of a trench.

Q 24. How do I obtain a hoisting license if I am renting equipment from a rental company?



A. Homeowners may rent hoisting machinery from a rental company for a period not to exceed fourteen (14) consecutive days. The rental company must provide one (1) hour of training for each type of equipment rented, and renters must be trained in the “proper and safe operation” of the equipment. After the training, the rental company may issue a temporary license to operate the rented equipment. See 520 CMR 6.05 (11).

Q 25. How long is my temporary hoisting license valid?

A. The temporary license and rental of equipment cannot exceed 14 days. See 520 CMR 6.05 (11).

Q 26. I have heard there is an exemption for building foundations, is that correct?

A. For the "trench" created between a foundation wall and a soil wall, you do not need a trench permit because you have not “excavated” the hole as defined by M.G.L. c. 82, § 40, instead it was created when you poured the foundation wall.

All other excavations meeting the definition of a trench, “an excavation which is narrow in relation to its length, made below the surface ground in excess of three feet below grade and the depth of which is, in general, greater than the width, but the width of the trench, as measured at the bottom, is not greater than 15 feet,” are covered under the new regulation, even if they are near to or related to the building foundation. For example, excavations near a foundation to install drainage or a frost wall are covered. An excavation into which a foundation will later be poured is covered if it is less than 15' across and greater than 3' deep. In this instance, you will need a trench permit and a building permit or if your local permitting authority chooses, the two permits may be combined into one.

Q 27. Is a trench permit required for cemetery burials?

A. No. According to the statute, [M.G.L. c. 82A, §1](#), the regulations and the requirement for a permit apply to “all construction related excavations and trench safety.” Cemetery burials are not “construction related” and therefore do not require a permit.

Q 28. Is a trench permit required for farms?

A. Yes, if the trench is construction related. Whenever a construction related trench is created a permit is required under [M.G.L. c. 82A, §1](#). Excavations that involve the laying of pipes are construction related trenches; however, excavations such as cranberry bogs which do not have piping are not considered construction related.



Q 29. What action, if any, may a permitting authority take if it finds a violation of 520 CMR 14.00?

A. If the permitting authority or an inspector from DPS or DOS identifies a serious threat to public safety, he or she may order an immediate shutdown of the trench worksite. Conditions warranting the immediate shutdown of a trench include a fatality of serious injury to a member of the General Public; the failure to use effective protections for the General Public; the failure to obtain a permit; or any other condition that constitutes a serious threat to life, limb, or property of the General Public as determined by the permitting authority. An appeal from the immediate shutdown may be made to the permitting authority or DPS/DOS. The appeal must be made within 10 calendar days of the shutdown. The trench worksite may not operate again until such time as the entity ordering the shutdown has re-inspected the worksite and is satisfied that protections for the General Public are in use.

Where the permitting authority determines that the threat to public safety may warrant the suspension or revocation of the trench permit, the permitting authority may convene a hearing in accordance with the [Massachusetts Administrative Procedures Act, M.G.L. c. 30A](#).

In addition to a post-hearing suspension or revocation, the DPS is statutorily authorized to also assess administrative fines against an excavator. See [M.G.L. c. 82A, §1](#). The Department of Public Safety sends a written notice of intent to impose administrative fines, which may be up to \$5,000.00 per violation, to the violator. The party alleged to have violated the regulations may then request a hearing. Hearings are not held prior to the assessment of a fine, but must be requested in writing and must be filed with the Department of Public Safety within 10 calendar days of receipt of the notice of violation. The failure to make a timely request for a hearing shall constitute a waiver of the right to a hearing. All hearings shall be convened by a Hearing Officer of the Department of Public Safety and shall be held in accordance with M.G.L. c. 30A.

Q 30. What proof is required to demonstrate to the permitting authority that the competent person listed on the permit application form meets the definition of a competent person?

A. A “competent person” is defined as “a person or persons who is capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to people, and who has authorization to take prompt corrective measures to eliminate them. A competent person must be able to demonstrate that he or she has been trained in and is knowledgeable about: soil analysis, the use of protections for the General Public and the requirements of this regulation.” See 520 CMR 14.02.

The “competent person” is a performance based standard and the individual must have the specific knowledge discussed above; however, there is no required number of hours of training or certificates to prove such knowledge. Therefore, a permitting authority is not able to make an assessment about the competent person listed on the permit application and will have to trust that the competent person listed on the application by the applicant meets the definition.

