



Town of Marshfield
Permit issued by Town Engineer
870 Moraine Street
Marshfield, Massachusetts 02050
Phone (781) 834-5561
FAX (781) 837-7163

Permit Number _____
Date Issued _____
Expiration Date _____
ESTIMATED START _____
ESTIMATED FINISH _____

TRENCH PERMIT

Pursuant to G.L. c. 82A §1 and 520 CMR 14.00 et seq.(as amended)

THIS PERMIT MUST BE FULLY COMPLETED PRIOR TO CONSIDERATION

Name of Applicant			Phone		Cell	
Street Address						
City/Town	MA	ZIP				
Name of Excavator (if different from applicant)			Phone		Cell	
Street Address						
City/Town	MA	ZIP				
Name of Owner(s) of Property			Phone		Cell	
Street Address						
City/Town	MA	ZIP				
Other Contact			Permit Fee Received No () Yes ()			
Description, location and purpose of proposed trench: Please describe the exact location of the proposed trench and its purpose (include a description of what is (or is intended) to be laid in proposed trench (eg; pipes/cable lines etc..) Please use reverse side if additional space is needed.						
** Insurance Certificate #:						
Name and Contact Information of Insurer:						
Policy Expiration Date:						
Dig Safe #:						

** Minimum Liability: \$100,000 per person / \$300,000 per case SEND COPY WITH APPLICATION

Name of Competent Person (as defined by 520 CMR 14.02):	
Massachusetts Hoisting License #	
License Grade:	Expiration Date:

BY SIGNING THIS FORM, THE APPLICANT, OWNER, AND EXCAVATOR ALL ACKNOWLEDGE AND CERTIFY THAT THEY ARE FAMILIAR WITH, OR, BEFORE COMMENCEMENT OF THE WORK, WILL BECOME FAMILIAR WITH, ALL LAWS AND REGULATIONS APPLICABLE TO WORK PROPOSED, INCLUDING OSHA REGULATIONS, G.L. c. 82A, 520 CMR 14.00 et seq., AND ANY APPLICABLE MUNICIPAL ORDINANCES, BY-LAWS AND REGULATIONS AND THEY COVENANT AND AGREE THAT ALL WORK DONE UNDER THE PERMIT ISSUED FOR SUCH WORK WILL COMPLY THEREWITH IN ALL RESPECTS AND WITH THE CONDITIONS SET FORTH BELOW.

THE UNDERSIGNED OWNER AUTHORIZES THE APPLICANT TO APPLY FOR THE PERMIT AND THE EXCAVATOR TO UNDERTAKE SUCH WORK ON THE PROPERTY OF THE OWNER, AND ALSO, FOR THE DURATION OF CONSTRUCTION, AUTHORIZES PERSONS DULY APPOINTED BY THE MUNICIPALITY TO ENTER UPON THE PROPERTY TO MONITOR AND INSPECT THE WORK FOR CONFORMITY WITH THE CONDITIONS ATTACHED HERETO AND THE LAWS AND REGULATIONS GOVERNING SUCH WORK.

THE UNDERSIGNED APPLICANT, OWNER AND EXCAVATOR AGREE JOINTLY AND SEVERALLY, TO REIMBURSE THE MUNICIPALITY FOR ANY AND ALL COSTS AND EXPENSES INCURRED BY THE MUNICIPALITY IN CONNECTION WITH THIS PERMIT AND THE WORK CONDUCTED THEREUNDER, INCLUDING BUT NOT LIMITED TO ENFORCING THE REQUIREMENTS OF STATE LAW AND CONDITIONS OF THIS PERMIT, INSPECTIONS MADE TO ASSURE COMPLIANCE THEREWITH, AND MEASURES TAKEN BY THE MUNICIPALITY TO PROTECT THE PUBLIC WHERE THE APPLICANT OWNER OR EXCAVATOR HAS FAILED TO COMPLY THEREWITH, INCLUDING POLICE DETAILS AND OTHER REMEDIAL MEASURES DEEMED NECESSARY BY THE MUNICIPALITY.

THE UNDERSIGNED APPLICANT, OWNER AND EXCAVATOR AGREE JOINTLY AND SEVERALLY TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE MUNICIPALITY AND ALL OF ITS AGENTS AND EMPLOYEES FROM ANY AND ALL LIABILITY, CAUSES OR ACTION, COSTS, AND EXPENSES RESULTING FROM OR ARISING OUT OF ANY INJURY, DEATH, LOSS, OR DAMAGE TO ANY PERSON OR PROPERTY DURING THE WORK CONDUCTED UNDER THIS PERMIT.

APPLICANT SIGNATURE

_____ DATE _____

EXCAVATOR SIGNATURE (IF DIFFERENT)

_____ DATE _____

OWNER'S SIGNATURE (IF DIFFERENT)

_____ DATE: _____

For City/Town use -- Do not write in this section

PERMIT APPROVED BY	\$ 25.00 Application Fee
PERMITTING AUTHORITY	
CONDITIONS OF APPROVAL	

By signing the application, the applicant understands and agrees to comply with the following:

- i. No trench may be excavated unless the requirements of sections 40 through 40D of chapter 82, and any accompanying regulations, have been met and this permit is invalid unless and until said requirements have been complied with by the excavator applying for the permit including, but not limited to, the establishment of a valid excavation number with the underground plant damage prevention system as said system is defined in section 76D of chapter 164 (DIG SAFE);
- ii. Trenches may pose a significant health and safety hazard. Pursuant to Section 1 of Chapter 82 of the General Laws, an excavator shall not leave any open trench unattended without first making every reasonable effort to eliminate any recognized safety hazard that may exist as a result of leaving said open trench unattended. Excavators should consult regulations promulgated by the Department of Public Safety in order to familiarize themselves with the recognized safety hazards associated with excavations and open trenches and the procedures required or recommended by said department in order to make every reasonable effort to eliminate said safety hazards which may include covering, barricading or otherwise protecting open trenches from accidental entry.
- iii. Persons engaging in any in any trenching operation shall familiarize themselves with the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 et seq., entitled Subpart P "Excavations".
- iv. Excavators engaging in any trenching operation who utilize hoisting or other mechanical equipment subject to chapter 146 shall only employ individuals licensed to operate said equipment by the Department of Public Safety pursuant to said chapter and this permit must be presented to said licensed operator before any excavation is commenced;
- v. By applying for, accepting and signing this permit, the applicant hereby attests to the following: (1) that they have read and understands the regulations promulgated by the Department of Public Safety with regard to construction related excavations and trench safety; (2) that he has read and understands the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 et seq., entitled Subpart P "Excavations" as well as any other excavation requirements established by this municipality; and (3) that he is aware of and has, with regard to the proposed trench excavation on private property or proposed excavation of a city or town public way that forms the basis of the permit application, complied with the requirements of sections 40-40D of chapter 82A.
- vi. This permit shall be posted in plain view on the site of the trench.

For additional information please visit the Department of Public Safety's website at www.mass.gov/dps

Summary of Excavation and Trench Safety Regulation (520 CMR 14.00 et seq.)

This summary was prepared by the Massachusetts Department of Public Safety pursuant to G.L.c.82A and does not include all requirements of the 520 CMR 14.00. To view the full regulation and G.L.c.82A, go to www.mass.gov/dps. Pursuant to M.G.L. c. 82, § 1, the Department of Public Safety, jointly with the Division of Occupational Safety, drafted regulations relative to trench safety. The regulation is codified in section 14.00 of title 520 of the Code of Massachusetts Regulations. The regulation requires all excavators to obtain a permit prior to the excavation of a trench made for a construction-related purpose on public or private land or rights-of-way. All municipalities must establish a local permitting authority for the purpose of issuing permits for trenches within their municipality. Trenches on land owned or controlled by a public (state) agency requires a permit to be issued by that public agency unless otherwise designated.

In addition to the permitting 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. Accordingly, unattended trenches must be covered, barricaded or backfilled. Covers must be road plates at least ¾" thick or equivalent; barricades must be fences at least 6' high with no openings greater than 4" between vertical supports; backfilling must be sufficient to eliminate the trench. Alternatively, excavators may choose to attend trenches at all times, for instance by hiring a police detail, security guard or other attendant who will be present during times when the trench will be unattended by the excavator.

The regulations further provide that local permitting authorities, the Department of Public Safety, or the Division of Occupational Safety may order an immediate shutdown of a trench in the event of a death or serious injury; the failure to obtain a permit; or the failure to implement or effectively use adequate protections for the general public. The trench shall remain shutdown until re-inspected and authorized to re-open provided, however, that excavators shall have the right to appeal an immediate shutdown. Permitting authorities are further authorized to suspend or revoke a permit following a hearing. Excavators may also be subject to administrative fines issued by the Department of Public Safety for identified violations.

This is a worker protection standard, and is designed to protect employees who are working inside a trench. This summary was prepared by the Massachusetts Division of Occupational Safety and not OSHA for informational purposes only and does not constitute an official interpretation by OSHA of their regulations, and may not include all aspects of the standard.

For further information or a full copy of the standard go to www.osha.gov.

- **Trench Definition per the OSHA standard:**
 - An excavation made below the surface of the ground, narrow in relation to its length.
 - In general, the depth is greater than the width, but the width of the trench is not greater than fifteen feet.
- **Protective Systems** to prevent soil wall collapse are always required in trenches deeper than 5', and are also required in trenches less than 5' deep when the competent person determines that a hazard exists. Protection options include:
 - Shoring. Shoring must be used in accordance with the OSHA Excavation standard appendices, the equipment manufacturer's tabulated data, or designed by a registered professional engineer.
 - Shielding (Trench Boxes). Trench boxes must be used in accordance with the equipment manufacturer's tabulated data, or a registered professional engineer.
 - Sloping or Benching. In Type C soils (what is most typically encountered) the excavation must extend horizontally 1 ½ feet for every foot of trench depth on both sides, 1 foot for Type B soils, and ¾ foot for Type A soils.
 - A registered professional engineer must design protective systems for all excavations greater than 20' in depth.
- **Ladders** must be used in trenches deeper than 4'.
 - Ladders must be inside the trench with workers at all times, and located within 25' of unobstructed lateral travel for every worker in the trench.
 - Ladders must extend 3' above the top of the trench so workers can safely get onto and off of the ladder.
- **Inspections** of every trench worksite are required:
 - Prior to the start of each shift, and again when there is a change in conditions such as a rainstorm.
 - Inspections must be conducted by the competent person (see below).
- **Competent Person(s)** is:
 - Capable (i.e., trained and knowledgeable) in identifying existing and predictable hazards in the trench, and other working conditions which may pose a hazard to workers, and
 - Authorized by management to take necessary corrective action to eliminate the hazards. Employees must be removed from hazardous areas until the hazard has been corrected.
- **Underground Utilities** must be:
 - Identified prior to opening the excavation (e.g., contact Digsafe).
 - Located by safe and acceptable means while excavating.
 - Protected, supported, or removed once exposed.
- **Spoils** must be kept back a minimum of 2' from the edge of the trench.
- **Surface Encumbrances** creating a hazard must be removed or supported to safeguard employees. Keep heavy equipment and heavy material as far back from the edge of the trench as possible.
- **Stability of Adjacent Structures:**
 - Where the stability of adjacent structures is endangered by creation of the trench, they must be underpinned, braced, or otherwise supported.
 - Sidewalks, pavements, etc. shall not be undermined unless a support system or other method of protection is provided.
- **Protection from water accumulation hazards:**
 - It is not allowable for employees to work in trenches with accumulated water. If water control such as pumping is used to prevent water accumulation, this must be monitored by the competent person.
 - If the trench interrupts natural drainage of surface water, ditches, dikes or other means must be used to prevent this water from entering the excavation.
- **Additional Requirements:**
 - For mobile equipment operated near the edge of the trench, a warning system such as barricades or stop logs must be used.
 - Employees are not permitted to work underneath loads. Operators may not remain in vehicles being loaded unless vehicles are equipped with adequate protection as per 1926.601(b)(6).
 - Employees must wear high-visibility clothing in traffic work zones.
 - Air monitoring must be conducted in trenches deeper than 4' if the potential for a hazardous atmosphere exists. If a hazardous atmosphere is found to exist (e.g., O₂ <19.5% or >23.5%, 20% LEL, specific chemical hazard), adequate protections shall be taken such as ventilation of the space.
 - Walkways are required where employees must cross over the trench. Walkways with guardrails must be provided for crossing over trenches > 6' deep.
 - Employees must be protected from loose rock or soil through protections such as scaling or protective barricades.



Deval L. Patrick
Governor

Timothy P. Murray
Lieutenant Governor

The Commonwealth of Massachusetts
Department of Public Safety

&
Department of Labor, Division of Occupational Safety
Boston, Massachusetts 02108

www.mass.gov

Kevin M. Burke
Secretary
Executive Office of Public Safety &
Security

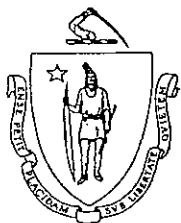
Suzanne M. Bump
Secretary
Executive Office of Labor &
Workforce Development

Thomas G. Gatzunis, P.E.
Commissioner
Department of Public Safety

Laura M. Marlin
Commissioner
Division of Occupational Safety

Notice of New Regulation
Excavation & Trench Safety Regulation
520 CMR 14.00

- This new PUBLIC SAFETY regulation is required by statute and is designed to prevent the general public from falling into an unattended trench and suffering an injury or fatality. This regulation be enforced starting 3/1/09.
- Under the new regulation, a **trench** is defined as a subsurface excavation greater than 3' in depth, and is 15 feet or less between soil walls as measured from the bottom.
- All regulated trenches must be **attended, covered, barricaded, or backfilled**. Covers must be road plates at least ¾" thick or equivalent, barricades must be fences at least 6' high with no openings greater than 4" between vertical supports and all horizontal supports required to be located on the trench-side of the fencing.
- This applies to all construction-related trenches on public ways, public property, or private property.
- To ensure that all excavators are aware of and follow these new public safety regulations, a **permit** will be required prior to excavation of all regulated trenches.
- **All excavators** must obtain a trench permit for each trench site. The new trench permit will require information such as the name of excavator, the location of trench, a certificate of insurance, and the Dig Safe number.
- Under the regulation, municipalities must designate a **permitting authority** to issue the required permits for trenches on public ways or private property within the municipality. For state property, the relevant state authority will issue the permits.
- Municipalities may collect a reasonable **fee** to cover administrative costs of issuing permits.
- Permitting authorities are not required to conduct **inspections** of trenches for which they have issued permits. However, a permitting authority notified of a potential violation is authorized to take action, including an immediate shutdown, if violations of the new regulation are identified. Excavators may also be subject to administrative fines issued by the Department of Public Safety for violations.
- Municipal or state departments conducting excavations, such as a municipal water department or state highway authority, will be required to obtain a new trench permit.
- This new regulation in no way modifies or supersedes existing trench **worker safety** regulations. Workers in trenches must comply with the existing OSHA Excavation Standard, 29 CFR 1926, Subpart P. This new public safety regulation is entirely separate from and has no relationship to the existing trench worker safety standard.
- This is only a summary of the regulation. Please read the full regulation and obtain further information at www.mass.gov/dps, click on "trenches" from the left-side menu.



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Notice of New Regulation
Excavation & Trench Safety Regulation
520 CMR 14.00

Trench Frequently Asked Questions (FAQs)

revised February 23, 2009

Questions

1. What do the Trench Safety Regulations (520 CMR 14.00) require?
2. What is a trench?
3. Why do the regulations require a permit to create a trench?
4. What is a permitting authority?
5. Can a permitting authority divide its responsibilities among various qualified entities or individuals to issue permits?
6. I am an excavator. Where may I obtain a permit and what is required?
7. May permitting authorities charge fees for trench permits?
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?
9. Are excavators expected to obtain a permit before responding to an emergency, such as a water main break?
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?
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?
12. What is a competent person and who on the excavation crew should this person be?
13. What are municipalities and public agencies required to do under the trench regulations?
14. Are municipalities required to notify the Department of Public Safety when they issue permits?
15. Are state agencies required to notify the Department of Public Safety after the issuance of a trench permit?
16. Should the permitting authority notify the Department of Public Safety after administrative action is taken by the permitting authority?
17. What are the safety precautions that I must take as an excavator?
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?
19. Can a inch thick piece of plywood be used to cover the trench?
20. What is considered equivalent to a ¾ inch steel plate?
21. Is there a minimum width for an excavation to be covered under the law?

22. Are homeowners or individuals excavating a trench on their own property required to obtain a trench permit?
23. Are homeowners or individuals using hoisting machinery to excavate on their own property required to obtain a hoisting license?
24. How do I obtain a hoisting license if I am renting equipment from a rental company?
25. How long is my temporary hoisting license valid?
26. I have heard there is an exception for building foundations, is that correct?
27. Is a trench permit required for cemetery burials?
28. Is a trench permit required for farms?
29. What action, if any, may a permitting authority take if it finds a violation of 520 CMR 14.00?
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?

Answers

Q. 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.

[Back to Top](#)

Q. 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."

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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

The trench permit is similar to a street opening permit and the application for a trench permit may be included with that permit. Once issued, the permit must be posted in plain view at the trench worksite, such as in the window of a construction trailer.

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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

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.

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. Can a 3/4 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 3/4 inches thick or equivalent.

[Back to Top](#)

Q. What is considered equivalent to a 3/4 inch steel plate?

A. A cover equivalent to a steel metal plate must be able to withstand the same load as a 3/4 inch steel plate.

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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.

[Back to Top](#)

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.

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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](#).

[Back to Top](#)

Q. 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. The notification form may be accessed [here](#).

[Back to Top](#)

Q. 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

Q. 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.

[Back to Top](#)

Q. 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).

[Back to Top](#)

Q. 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).

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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.

[Back to Top](#)

Q. 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.