

*This information is not the official version of the Official Compilation of the Rules and Regulations of the State of New York (NYCRR). No representation is made as to its accuracy, nor may it be used as an official business record of the New York State Department of Public Service. To ensure accuracy and for evidentiary purposes, reference should be made to the official NYCRR. The Official NYCRR is available from West Publishing: 1-800-344-5009.*

#### § 101.1 Definitions

When used in this Part, the following definitions apply:

(a) Subsurface electric facilities means all underground cable and/or conduit, transformers and other associated equipment, manholes or any other subsurface structures, including poles and anchors, utilized to furnish electric service and owned or operated by any electric utility company under the jurisdiction of the New York State Public Service Commission.

(b) Gas transmission facilities means gas pipelines that:

(1) transport gas from a production or underground storage facility to a distribution center or underground storage facility;

(2) transport gas within a storage field; or

(3) operate at a pressure of 125 psig or more.

(c) Gas distribution facilities means gas pipelines other than gas transmission facilities and includes gas service lines.

(d) Liquid petroleum pipeline means a pipeline that either:

(1) transports liquid petroleum from a production or storage facility to a distribution center or storage facility; or

(2) transports petroleum within a production field; and

(3) is certified to operate at a pressure of 200 psig or more.

(e) Land used in agricultural production (as defined in *Agricultural and Markets Law, section 301*), means not less than 10 acres of land used as a single operation in the preceding two years for the production of an average gross sales value of \$ 10,000 or more. For the purposes of this subdivision, whenever a crop is processed before sale, the average gross sales value shall be based upon the market value of such crop in its unprocessed state. Land used in agricultural production shall not include land or portions thereof used for processing or retail merchandising of such crops, livestock or livestock products. Land used in agricultural production shall also include:

(1) rented land which otherwise satisfies the requirements for eligibility for an agricultural assessment;

(2) land of not less than 10 acres used as a single operation for the production for sale of crops, livestock or livestock products, exclusive of woodland products, which does not independently satisfy the gross sales value requirement, where such land was used in such production for the preceding two years and currently is being so used under a written rental arrangement of five or more years in conjunction with land which qualifies for an agricultural assessment;

(3) land used in support of a farm operation or land used in agricultural production, constituting a portion of a parcel, as identified on the assessment roll, which also contains land qualified for an agricultural assessment;

(4) farm woodland which is part of land which is qualified for an agricultural assessment, provided, however, that such farm woodland attributable to any separately described and assessed parcel shall not exceed fifty acres. For purposes of determining average gross sales value, proceeds from the sale of woodland products from farm woodland eligible to receive an agricultural assessment may be included up to a maximum annual amount of \$ 2000; and

(5) land set aside through participation in a federal conservation program pursuant to title one of the federal food security act of nineteen hundred eighty-five or any subsequent federal programs established for the purposes of reple-

nishing highly erodible land which has been depleted by continuous tilling or reducing national surpluses of agricultural commodities.

(f) Cultivated land (as defined in *1 NYCRR section 370.2 (j)*) means land used for growing crops, hay, pasture, and permanent pasture for the preceding two years.

(g) Farm operator is a person who owns or leases land used in agricultural production.

(h) Double-ditching is a method of separately excavating and stockpiling the topsoil layer (i.e., the A horizon) of a respective soil from the subsoil/substratum layers.

(i) Sensitive resources means areas that are likely to be adversely affected by electric facility construction, including: wetlands; streams; waterbodies; springs; wells; rare, threatened and endangered species habitat; unique old forest stands; officially designated scenic areas; officially designated historical and cultural resources; soil resources contained in cultivated land requiring land management facilities and practices on or below the surface and specialty cropland (i.e., vineyards, apiaries, hop fields, orchards, sugar bush, etc.).

(j) Noise-sensitive uses means those land uses which may be adversely affected by noise; for example, residences, schools, churches, cemeteries, hospitals and outdoor amphitheaters.

(k) Public R/W means the area within the territorial limits of any street, avenue, road or way that is for any highway purpose under the jurisdiction of the State of New York or a legislative body of any county, city, town or village, that is open to public use and that may be used for the placement of utility facilities.

(l) R/W (right-of-way) means a right to pass over, occupy or use another's land for placing and maintaining utility facilities.

(m) Direct buried cable installation by cable plowing means a procedure using specialized equipment which, in a linked sequence of operations, opens soils to the desired depth, places or lays in a utility service cable and replaces the temporarily disturbed surface soil.

#### § 101.2 Clearance requirements of new underground electric facilities from gas and liquid petroleum pipelines

(a) All new subsurface electric facilities shall be constructed with a standard minimum clearance of 12 inches from gas transmission facilities.

(b) All new subsurface electric facilities shall be constructed with a standard minimum clearance of six inches from gas distribution facilities.

(c) All new subsurface electric facilities shall be constructed with a standard minimum clearance of 12 inches from liquid petroleum pipelines.

(d) The standard minimum clearances specified in subdivisions (a), (b) and (c) of this section, when not obtainable through practical means, may be reduced to an absolute minimum of four inches, provided that such reduction is agreeable to all companies involved and that protective materials suitable to all companies are placed between the power and gas or liquid petroleum facilities for the entire length of such reduced clearances.

(e) The standard minimum clearance for underground service laterals shall be four inches from the gas service pipeline. If it is not practical to achieve this clearance, it may be reduced to an absolute minimum of two inches provided that all companies involved agree to the reduction and that suitable protective materials are placed between the gas and power facilities for the entire length of the reduced clearances.

#### § 101.3 Clearance requirements of subsurface electric facilities constructed to replace existing facilities

Whenever subsurface electric facilities are replaced for any reason, the new facilities shall be constructed in accordance with section 101.2 of this Part.

#### § 101.4 Standards and practices applicable to the construction and environmental management of subsurface electric facilities

(a) This section consists of standards and practices which the utilities are expected to follow, to minimize adverse environmental impacts associated with the construction of subsurface electric facilities under Parts 98, 99 and 100 of this Title. In this section, any reference to subsurface electric facilities does not include poles and anchors.

(b) The standards and practices contained in this Part are not intended to supersede the jurisdiction of any federal, state or municipal agency that has permitting or other regulatory requirements intended to protect environmental resources or values which may be adversely affected by the installation of subsurface electric facilities. To accomplish the objectives set forth in this section, each utility shall stay in contact with directly affected landowners and governmental agencies having jurisdiction.

(c) Each utility shall use its best efforts to avoid or minimize, to the maximum extent practicable, any adverse environmental effects associated with the construction (including clearing and site-restoration activities) of subsurface electric facilities by:

(1) limiting clearing of trees, shrubs and landscaped areas in accordance with safe construction, operating and maintenance practices;

(2) minimizing off R/W impacts by confining construction activities and access to the smallest areas possible consistent with safe and efficient construction and operation practices;

(3) scheduling construction for those times that would minimize damage or disruption to sensitive resources, and agricultural production activities (except as otherwise agreed to by the landowner);

(4) minimizing disturbances to sensitive resources such as streams, wetlands or rare, threatened or endangered species habitats by limiting machinery movement in or near such resources during construction and throughout the life of the facility;

(5) selecting construction and maintenance equipment that minimizes damage to and disruption of soils;

(6) minimizing topsoil damage and soil erosion due to grading and other soil-scarifying activities by promptly stabilizing disturbed soil and employing soil separation as appropriate, and thereby preventing erosion and siltation and minimizing compaction; and,

(7) minimizing traffic disruption when construction vehicles travel along or cross highway R/W by providing appropriate traffic controls.

(d) The clearing, construction and site restoration practices set forth in the following provisions shall be observed by each utility where applicable:

(1) Each utility shall take care to prevent or minimize the grading or piling of soil off the R/W, particularly in cultivated land(s) and near streams and wetlands.

(2) Before constructing a new access road, each utility should give preference to using existing access to the R/W; however, where steep slopes (over 20 percent) are encountered along the R/W or where soils, which would not support construction equipment or would result in extensive rutting or compaction are encountered, the construction of either a temporary or permanent off R/W access road shall be considered. However, the placement of permanent access roads in cultivated land shall be avoided wherever possible, unless such roads are requested or agreed to by the landowner or farm operator.

(3) Each utility shall endeavor to complete stream crossings in the shortest amount of time, with the least amount of adverse environmental impact.

(4) Where necessary, each utility shall properly install temporary drainage and erosion control devices during clearing and grading operations, appropriately maintain them during construction and incorporate them, where necessary, into final grading operations.

(5) Before grading and trenching, each utility shall make an on-site effort to verify the location of any buried gas lines, water lines, sewer lines, drainage tiles or other facilities which may be encountered. All such facilities removed, cut, broken or otherwise damaged during facility construction shall be restored or replaced to at least their preexisting condition, unless the affected property owner declines such restoration or replacement or where such facilities would interfere with the safe and efficient operation and maintenance of the subsurface facilities.

(6) At the project planning stage, before initiating grading or trenching operations in cultivated land on land used in agricultural production (as demonstrated by the affected farm operator), each utility shall discuss with such farm operator and the appropriate County Soil and Water Conservation District the soil characteristics of the project area, drainage, irrigation, cultivation and other land management installations and practices, flood control, the proposed depth-of-cover above the facility and the appropriateness of topsoil segregation. In such cultivated land, all cable shall be installed with a minimum 40 inches of cover. However, the farm operator may require a depth-of-cover greater than 40 inches as a condition of permitting a right-of-way across his or her land where necessary to safely accommodate such practices and projects. In such cases, where practicable, the depth-of-cover shall be included in the easement recorded in the County Records Office. All such decisions should take into account the recommended practices and standards of the United States Department of Agricultural, Soil Conservation Service, as noted in the farm operator's Farm Conservation Plan on file with the County Soil and Water Conservation District. Notwithstanding the foregoing provisions concerning depth-of-cover, facilities located within 15 feet of the edge of the travel way of any private road or within 15 feet of the edge of any public R/W shall be buried at a minimum depth of 30 inches. Cable plow installation may be used in cultivated land unless the land within the area of construction contains subsurface drain lines. In those cases, open trenching shall be used unless the farm operator agrees to cable plow installation. A generic plan and procedure for the repair of drain lines removed, cut, broken or damaged by either method of installation shall be developed by the utility with the Soil Conservation Service and the New York State Department of Agricultural and Markets showing the method(s) for shouldering of the tile drain line repair into the undisturbed trench wall, the support of the repair tile and the maintenance of the drain line's gravity flow. In all cases of removal, cutting, breakage or damage of drain lines during construction by the utility, repairs shall be undertaken at the utility's expense.

(7) Where adverse effects to significant plantings such as ornamental shrubs and trees, as well as visual screens, cannot be avoided during construction, such plants shall be carefully removed and planted in a temporary location and then be returned as close as possible to their original location following backfilling. If such plants must be removed and are destroyed, they shall be replaced with species and varieties as close as possible in height, diameter and grade to those removed. Exceptions would be where such vegetation would interfere with the operation and maintenance of the facility, the construction is done at the request of the affected landowner, or where the affected landowner and the utility agree otherwise. If the affected property has been the subject of federal, state or local agency review jurisdiction, the involved federal, state or local agency must also agree to the extent the resulting disturbance affects a condition of a previously issued permit or other approval. Transplanting and plant replacement shall be done consistent with established horticultural practices.

(8) In areas where livestock are confined or farm equipment is operating, all trenches which will remain open overnight or on nonworking days shall be temporarily fenced or barricaded, unless the trench shoring or sheeting material extends at least 40 inches above the working surface. Where reasonably determined to be necessary by the affected landowner or farm operator, temporary access shall be constructed to permit persons, vehicles and livestock to cross safely from one side of the trench to the other.

(9) Should dewatering of the trench become necessary, all water shall be filtered and dissipated through appropriate filter material or discharged onto vegetation or graveled areas, to prevent stream siltation, sedimentation and soil erosion. No such water shall be discharged onto cultivated land in the cropping season or directly into regulated streams, ponds or wetlands. If cultivated land receives discharges outside the cropping season, measures shall be applied to dissipate the water to prevent soil erosion.

(10) Engine-powered construction equipment shall be properly muffled and maintained to avoid producing excessive noise. Such equipment shall not be permitted to idle unnecessarily near noise-sensitive uses. Near such uses, the quietest equipment which is readily available to each utility and appropriate for the task shall be employed. If blasting is necessary, explosive charges shall be controlled to limit the sound pressure level to 127 dB.

(11) Whenever artifacts or relics which appear to have historic value are uncovered during construction, work shall be stopped immediately at the site of impact and the State Historic Preservation Office shall be notified. Work elsewhere may continue. Construction at the impact site shall not be resumed until the State Historic Preservation Office or its designated representative determines the significance of the find and, if required, develops a plan to salvage or protect such resource. If prompt clarification of the situation by such officials is not forthcoming or if complications arise, the Commission shall be notified immediately.

(12) In restoring the R/W each utility shall:

(i) recycle all waste material or dispose of it in accordance with governing rules and regulations;

(ii) grade the entire disturbed R/W to restore it to original grade and contour, unless changes made to grade and contour are agreed to by the landowner;

(iii) contact the County Soil and Water Conservation District for the most appropriate seed mix and application rates in the construction area;

(iv) utilize the most appropriate seed mix and application rate, giving consideration to compatibility with undisturbed areas of the R/W and the surrounding land and consistent with erosion, wildlife and other environmental concerns;

(v) determine the site-specific seed mix to be applied in consultation with the affected farm operator;

(vi) by the end of the workweek in which construction commences, apply mulch (and seed, if no further disturbance is planned) on all disturbed sites within 20 feet of all streams and wetlands;

(vii) stabilize all cut and fill banks by employing the most appropriate erosion control devices and techniques;

(viii) complete stream bank restoration as soon as practicable after the stream crossing installation is completed. If seasonal conditions do not permit final restoration, temporary restoration measures shall be undertaken, with final restoration measures to follow as soon as practicable thereafter; and

(ix) repair or replace (and leave in a condition equivalent to or better than, the preexisting) all existing installations or improvements, for example, lawns, fences, walls, curbs, sidewalks, culverts, mailboxes, gates, tiles, drainage ditches, waterways, and ponds which are disturbed, damaged or destroyed during construction, unless previous arrangements with landowners or farm operators dictate otherwise.

(e) Each utility shall ensure that the construction supervisor, who is on the job, appropriately applies the foregoing standards and practices. The supervisor shall also have authority to stop any work that is inconsistent with the intent of this section and to direct appropriate remedial action. The supervisor shall obtain a competent specialist's advice on how to deal with any sensitive resources encountered.