

Consultation on an Administrative Penalties Regime for Ontario One Call

To: Ministry of Public and Business Service Delivery via Ontario Regulatory Registry

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About Us

Good Roads is a municipal association concerned with the quality and design of roads in Ontario. We have been devoted to the cause of better roads since 1894. Originally known as the Ontario Good Roads Association (and still using that name corporately), our members include most of Ontario's municipalities and a growing number of First Nations as well as dozens of affiliated corporate members in the transportation and infrastructure sectors.

For more information, please visit www.GoodRoads.ca.

Background

Good Roads would like to thank the Ministry of Public and Business Service Delivery (MPBSD) for taking the time to consult on the changes being made to the *Ontario Underground Infrastructure Notification System Act*. Good Roads and its members welcome action on the issue of late utility locate delivery.

Unpredictable and late utility locates can cause significant and escalating havoc for critical infrastructure projects. These costly delays mount quickly – for example, each hour of idle time in the sewer and watermain sector incurs \$1,000 in additional costs, while that figure is \$10,000 per day in the roads sector.

Municipalities are unique in that they are both requesters and locators of utility locates. Although Good Roads and its members are generally supportive, there are a few concerns we would like to flag with the ministry.

Concerns

1. Implementation

Municipalities are concerned about how these administrative monetary penalties (AMPs) will be implemented. The consultation documents do not provide clarity. In the Summary of Draft Regulation document posted by the ministry on the ORR, the following is stated:

Proposed administrative penalty (AP) regime – It is proposed that the administrative penalties regulatory framework consist of a list of the contraventions under the One Call Act for which an administrative penalty may be imposed, along with the associated penalty amounts.

Good Roads is seeking clarification on when these penalties will be imposed as the word “may” is confusing. Will this happen in each instance? Will One Call choose when to impose the penalties? Will there be warnings before fines are implemented? Will it be complaint-based?

Good Roads would like to see a publicly available implementation policy that municipalities can refer to.

2. Fine for Subsection 14(1)

The timeliness of municipalities in completing locate deliveries has not been the issue. In fact, in most instances municipalities complete almost every locate twice and sometimes three times before large utilities companies have completed it even once.

Consequently, the biggest issue for municipalities, particularly small and northern, are the fines associated with Subsection 14(1): Failure of member to notify the Corporation that it has done the things required by subsection 6(1) within three business days. While we acknowledge the importance of sharing completed locates with One Call, this will not actually speed up the locate delivery process. For small municipalities with limited staff the three-day limit is unachievable without having multiple staff to cover this aspect of the work.

Below is a message from a concerned Good Roads member which is typical of the feedback received:

“We have never failed to meet the five-day timeline to complete the locate. That is done by our foreman in the field. Following that, day one is usually lost to logistics, leaving two days to enter that the locate was complete in the 360 Feedback Program. Like many municipalities, the only public works staff that regularly spends time in an office is the Director (me). When the foreman is on vacation or away for any reason, backfilling to complete the locates is done by myself. When I am away, there is no backfill for my duties, I catch up when I return. When it comes to providing the feedback within 3 days, it requires that information to be entered multiple times per week or risk a \$500 fine per locate per day. In essence, if this becomes law the most important task for the Director of Public Works for my municipality would be to complete the feedback to let One Call know that we completed the locate.”

Good Roads believes that the fine for contravening Subsection 14(1) of the One Call Act should be scrapped.

3. Fine for Section 12

Feedback received by Good Roads makes clear that it will be incredibly difficult to complete infrastructure projects if locate requests are not submitted 90-120 days in advance. Fining municipalities for submitting requests more than 30 days in advance will simply delay infrastructure projects. Good Roads believes that the fine for contravening Section 12 of the One Call Act should be scrapped.

4. Penalty Amounts

The proposed penalties are simply not sustainable for smaller municipalities. As mentioned above, with such limited human resources these municipalities simply won't have the capacity to meet most of these deadlines through no fault of their own.

While large utility companies may have no issue paying these fines, small municipalities certainly will. As such, Good Roads believes that ability to pay should be taken into consideration when finalizing these penalty amounts.

5. Use of Funds

From a municipal perspective, the primary reason why utility locate deliveries are often delayed is a lack of locators. Consequently, Good Roads believes that a big portion of the funds received from these penalties should be used to train more locators to alleviate these delays. Good Roads would also like to see these funds dedicated to helping smaller municipalities update their utility mapping.

Recommendations

Good Roads recommends that:

1. One Call clarify the implementation process and make publicly available an implementation policy prior to these fines coming into force.
2. The fine for contravening Subsection 14(1) of the One Call Act be scrapped.
3. The fine for contravening Section 12 of the One Call Act be scrapped.
4. Ability to pay is taken into consideration when finalizing the penalty amounts.
5. That funds received from penalties be used to train more locators and help smaller municipalities update their utility mapping.