

1 | **Language 3/3/14**

2 | **reviewed by the enforcement committee**

3
4 | **OHIO REVISED CODE**

5 | **153.64 Protecting underground utility facilities during construction**
6 | **of public improvement.**

7 | (A) As used in this section:

8 | (1) "Public improvement" means any construction, reconstruction, improvement,
9 | enlargement, alteration, or repair of a building, highway, drainage system, water
10 | system, road, street, alley, sewer, ditch, sewage disposal plant, water works, and
11 | all other structures or works of any nature by a public authority.

12 | (2) "Public authority" includes the following:

13 | (a) The state, or a county, township, municipal corporation, school district, or
14 | other political subdivision ;

15 | (b) Any public agency, authority, board, commission, instrumentality, or
16 | special district of or in the state or a county, township, municipal corporation,
17 | school district, or other political subdivision;

18 | (c) A designer as defined in section [3781.25](#) of the Revised Code who is
19 | acting on behalf of any entity described in division (A)(2)(a) or (b) of this
20 | section.

21 | (3) "Underground utility facilities" includes any item buried or placed below ground
22 | or submerged under water for use in connection with the storage or conveyance of
23 | water or sewage; or electronic, telephonic, or telegraphic communications;
24 | electricity; petroleum products; manufactured, mixed, or natural gas; synthetic or
25 | liquefied natural gas; propane gas; or other substances. "Underground utility
26 | facilities" includes, but is not limited to, all operational underground pipes, sewers,
27 | tubing, conduits, cables, valves, lines, wires, manholes, and attachments, whether
28 | owned by any public or private or profit or nonprofit person, firm, partnership,
29 | company, corporation, joint stock association, joint venture, or voluntary
30 | association, wherever organized or incorporated, except for a private septic system
31 | in a single- or multi-family dwelling utilized only for that dwelling and not connected
32 | to any other system.

33 | (4) " Protection service" means a notification center not an owner of an
34 | underground utility facility that complies with the following:

35 | (a) It exists for the purpose of receiving notice from public authorities and
36 | from other persons that plan to prepare plans and specifications for, or

37 engage in, public improvements involving digging, blasting, excavating, or
38 other underground construction activities ;

39 (b) It distributes the information described in division (A)(4)(a) of this
40 section to its members and participants;

41 (c) It has registered by March 14, 1989, with the secretary of state and the
42 public utilities commission under former division (F) of this section as it
43 existed on that date.

44 (5) "Construction area" means the area delineated on the plans and specifications
45 for the public improvement within which the work provided for in the contract will
46 be performed.

47 (B)

48 (1) In any public improvement which may involve underground utility facilities, the
49 public authority, prior to preparing plans and specifications, shall contact a
50 protection service and any owners of underground utility facilities that are not
51 members of a protection service for the existence and location of all underground
52 utility facilities within the construction area.

53 (2) If requested by the public authority, each owner of underground utility facilities
54 within the construction area, other than real property owners listed in divisions
55 (C)(1) to (4) of section [3781.25](#) of the Revised Code, shall do one of the following
56 within ten days of receiving notice from the public authority or a protection service:

57 (a) Mark the location of the underground utility facilities, other than those
58 facilities serving single-family or two-, three-, or four-unit dwellings, within
59 the construction area in accordance with the marking standards described in
60 division (C) of section [3781.29](#) of the Revised Code;

61 (b) Provide digital or paper drawings, or both, that meet both of the following
62 requirements:

63 (i) They are drawn to scale and include locatable items. Locatable
64 items may include poles, pedestals, back of curb, sidewalk, edge of
65 pavement, centerline of ditch, property lines, and other similar items.

66 (ii) They depict the location of the underground utility facilities.

67 Compliance with division (B)(2) of this section does not relieve an
68 owner of underground utility facilities from compliance with the
69 marking requirements of section [3781.29](#) of the Revised Code.

70 (3) The public authority shall include, in the plans and specifications for such
71 improvement, the identity and location of the existing underground utility facilities

72 located in the construction area as provided to the public authority by the owner of
73 the underground utility facility and the name, address, and telephone number of
74 each owner of any underground utility facilities in the construction area that does
75 not subscribe to a protection service.

76 (4) Any anticipated temporary or permanent relocation of underground utility
77 facilities deemed necessary by the public authority shall be negotiated or arranged
78 by the public authority with the owners of the underground utility facilities prior to
79 the start of construction. If a temporary or permanent relocation of utility facilities
80 is necessary, the owner of the underground utility facility shall be given a
81 reasonable time to move such utility facilities unless the contractor to whom the
82 contract for a public improvement is awarded or its subcontractor agrees with the
83 owner of the underground utility facility to coordinate relocation with construction
84 operations.

85 (5) The public authority, within ten calendar days after award of a contract for a
86 public improvement, shall notify in writing all owners of underground utility facilities
87 known to be located in the construction area of the public improvement of the
88 name and address of the contractor to whom the contract for the public
89 improvement was awarded. Where notice is given in writing by certified mail, the
90 return receipt, signed by any person to whom the notice is delivered, shall be
91 conclusive proof of notice.

92 (C) The contractor to whom a contract for a public improvement is awarded or its
93 subcontractor, at least two working days, excluding Saturdays, Sundays, and legal
94 holidays, but no more than ten working days, prior to commencing construction
95 operations in the construction area which may involve underground utility facilities,
96 shall cause notice to be given to a protection service and the owners of
97 underground utility facilities shown on the plans and specifications who are not
98 members of a protection service. The owner of the underground utility facility,
99 within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, after
100 notice is received, shall stake, mark, or otherwise designate the location of the
101 underground utility facilities in the construction area in such a manner as to
102 indicate their course together with the approximate depth at which they were
103 installed.

104 (D) If the public authority fails to comply with the requirements of division (B) of
105 this section, the contractor to whom the work is awarded or its subcontractor
106 complies with the requirements of division (C) of this section, and the contractor or
107 its subcontractor encounters underground utility facilities in the construction area
108 that would have been shown on the plans and specifications for such improvement
109 had a protection service or owner of the underground utility facility who is not a
110 member of a protection service whose name, address, and telephone number is
111 provided by the public authority been contacted, then the contractor, upon
112 notification to the public authority, is entitled to an increase to the contract price for
113 itself or its subcontractor for any additional work that must be undertaken or
114 additional time that will be required and is entitled to an extension of the

115 completion date of the contract for the period of time of any delays to the
116 construction of the public improvement.

117 In the event of a dispute as to the application of this section, procedures may be
118 commenced under the applicable terms of the construction contract, or if the
119 contract contains no provision for final resolution of the dispute, pursuant to the
120 procedures for arbitration in Chapter 2711. of the Revised Code.

121 This section does not affect rights between the contractors and the public authority
122 for any increase in contract price or additional time to perform the contract when
123 the public authority complies with division (B) of this section.

124 Any public authority who complies with the requirements of division (B) of this
125 section and any contractor or its subcontractor who complies with the requirements
126 of division (C) of this section shall not be responsible to the owner of the
127 underground utility facility if underground utility lines are encountered not as
128 marked in accordance with the provisions of division (C) of this section by the
129 owner of the underground utility facility, unless the contractor or its subcontractor
130 has actual notice of the underground utility facility. Except as noted in this division,
131 this section does not affect rights between the contractor or its subcontractor and
132 the owner of the underground utility facility for failure to mark or erroneously
133 marking utility lines. The public authority shall not make as a requirement of any
134 contract for public improvement any change in responsibilities between the public
135 authority and the owners of the underground utility facilities in connection with
136 damage, injury, or loss to any property in connection with underground utility
137 facilities.

138 The contractor or its subcontractor shall alert immediately the occupants of nearby
139 premises as to any emergency that the contractor or subcontractor may create or
140 discover at or near such premises. The contractor or its subcontractor shall report
141 immediately to the owner or operator of the underground facility any break or leak
142 on its lines or any dent, gouge, groove, or other damage to such lines or to their
143 coating or cathodic protection, made or discovered in the course of their
144 excavation.

145 (E) This section does not affect rights between the public authority and the owners
146 of the underground utility facilities for responsibility for costs involving removal,
147 relocation, or protection of existing underground utility facilities, or for costs for
148 delays occasioned thereby.

149 **(F) Whoever violates obligations imposed by sections 153.64 of the Ohio**
150 **Revised Code shall be penalized in accordance 3781.37 of the Ohio Revised**
151 **Code.**

152 **Chapter 3781: BUILDING STANDARDS - GENERAL PROVISIONS**

153 3781.25 One-call utility protection service definitions.

154 As used in sections 3781.25 to [3781.38](#) of the Revised Code:

155 (A) "Protection service" means a notification center, but not an owner of an
156 individual utility, that exists for the purpose of receiving notice from persons that
157 prepare plans and specifications for or that engage in excavation work, that
158 distributes this information to its members and participants, and that has registered
159 by March 14, 1989, with the secretary of state and the public utilities commission of
160 Ohio under former division (F) of section [153.64](#) of the Revised Code as it existed
161 on that date.

162 (B) "Underground utility facility" includes any item buried or placed below ground or
163 submerged under water for use in connection with the storage or conveyance of
164 water or sewage; electronic, telephonic, or telegraphic communications; television
165 signals; electricity; crude oil; petroleum products; artificial or liquefied petroleum;
166 manufactured, mixed, or natural gas; synthetic or liquefied natural gas; propane
167 gas; coal; steam; hot water; or other substances. "Underground utility facility"
168 includes all operational underground pipes, sewers, tubing, conduits, cables, valves,
169 lines, wires, worker access holes, and attachments, owned by any person, firm, or
170 company. "Underground utility facility" does not include a private septic system in a
171 one-family or multi-family dwelling utilized only for that dwelling and not connected
172 to any other system.

173 (C) "Utility" means any owner or operator, or an agent of an owner or operator, of
174 an underground utility facility, including any public authority, that owns or operates
175 an underground utility facility. "Utility" does not include the owners of the following
176 types of real property with respect to any underground utility facility located on that
177 property:

178 (1) The owner of a single-family or two-, three-, or four-unit residential
179 dwelling;

180 (2) The owner of an apartment complex;

181 (3) The owner of a commercial or industrial building or complex of buildings,
182 including but not limited to, factories and shopping centers;

183 (4) The owner of a farm.

184 (D) "Approximate location" means the immediate area within the perimeter of a
185 proposed excavation site where the underground utility facilities are located.

186 (E) "Tolerance zone" means the site of the underground utility facility including the
187 width of the underground utility facility plus eighteen inches on each side of the
188 facility.

189 (F) "Working days" excludes Saturdays, Sundays, and legal holidays as defined in
190 section [1.14](#) of the Revised Code and "hours" excludes hours on Saturdays,
191 Sundays, and legal holidays.

192 (G) "Designer" means an engineer, architect, landscape architect, contractor,
193 surveyor, or other person who develops plans or designs for real property
194 improvement or any other activity that will involve excavation.

195 (H) "Developer" means the person for whom the excavation is made and who will
196 own or be the lessee of any improvement that is the object of the excavation.

197 (I) "Excavation" means the use of hand tools, powered equipment, or explosives to
198 move earth, rock, or other materials in order to penetrate or bore or drill into the
199 earth, or to demolish any structure whether or not it is intended that the demolition
200 will disturb the earth. "Excavation" includes such agricultural operations as the
201 installation of drain tile, but excludes agricultural operations such as tilling that do
202 not penetrate the earth to a depth of more than twelve inches. "Excavation"
203 excludes any activity by a governmental entity which does not penetrate the earth
204 to a depth of more than twelve inches. "Excavation" excludes coal mining and
205 reclamation operations regulated under Chapter 1513. of the Revised Code and
206 rules adopted under it.

207 (J) "Excavation site" means the area within which excavation will be performed.

208 (K) "Excavator" means the person or persons responsible for making the actual
209 excavation.

210 (L) "Interstate gas pipeline" means an interstate gas pipeline subject to the
211 "Natural Gas Pipeline Safety Act of 1968," 82 Stat. 720, 49 U.S.C. 1671, as
212 amended.

213 (M) "Interstate hazardous liquids pipeline" means an interstate hazardous liquids
214 pipeline subject to the "Hazardous Liquid Pipeline Safety Act of 1979," 93 Stat.
215 1003, 49 U.S.C. 2002, as amended.

216 (N) "Special notification requirements" means requirements for notice to an owner
217 of an interstate hazardous liquids pipeline or an interstate gas pipeline that must be
218 made prior to commencing excavation and pursuant to the owner's public safety
219 program adopted under federal law.

220 (O) "Commercial excavator" means any excavator, excluding a utility as defined in
221 this section, that satisfies both of the following:

222 (1) For compensation, performs, directs, supervises, or is responsible for the
223 excavation, construction, improvement, renovation, repair, or maintenance
224 on a construction project and holds out or represents oneself as qualified or
225 permitted to act as such;

226 (2) Employs tradespersons who actually perform excavation, construction,
227 improvement, renovation, repair, or maintenance on a construction project.
228

229 (P) "Person" has the same meaning as in section [1.59](#) of the Revised Code and also
230 includes a public authority.

231 (Q) "Positive response system" means an automated system facilitated by a
232 protection service allowing a utility to communicate to an excavator the presence or
233 absence of any conflict between the existing underground utility facilities and the
234 proposed excavation site.

235 (R) "One call notification system" means the software or communications system
236 used by a protection system to notify its membership of proposed excavation sites.

237 (S) "Project" means any undertaking by a private party of an improvement
238 requiring excavation.

239 (T) "Public authority" has the same meaning as in section [153.64](#) of the Revised
240 Code

241 (U) "Improvement" means any construction, reconstruction, improvement,
242 enlargement, alteration, or repair of a building, highway, drainage system, water
243 system, road, street, alley, sewer, ditch, sewage disposal plant, water works, and
244 all other structures or works of any nature.

245 (V) "Emergency" means an unexpected occurrence causing a disruption or damage
246 to an underground utility facility that requires immediate repair or a situation that
247 creates a clear and imminent danger that demands immediate action to prevent or
248 mitigate loss of or damage to life, health, property, or essential public services.

249 (W) "Nondestructive manner" means using low-impact, low-risk technologies such
250 as hand tools, or hydro or air vacuum excavation equipment.

251 **(x) "Commission" means the Public Utilities Commission of Ohio**
252
253 **(y) "Probable violation" means alleged violation**
254
255 **(z) "Staff" means the commission staff or the authorized representative.**

256 3781.26 Protection service for underground utility facilities.

257 (A) Each utility that owns or operates underground utility facilities shall participate
258 in and register the location of its underground utility facilities with a protection
259 service that serves the area where the facilities are located. A utility may elect to
260 participate in the service on a limited basis and if it does so, it shall register the
261 location of its underground utility facilities by identifying the municipal corporations
262 and outside the limits of a municipal corporation, the townships by county and,

263 where applicable, the immediate geographic area in which it has facilities. The
264 service shall establish reasonable fees for limited basis participants.

265 (B) Protection services, utilities, commercial excavators, excavation equipment
266 dealers, the public utilities commission of Ohio, the board of building standards,
267 local law enforcement agencies, and fire departments should publicize the
268 importance of ascertaining the location of underground utility facilities before
269 excavating and the use of protection services to ascertain that information.

270 (C) A protection service shall maintain records of notifications received from
271 developers, designers, and excavators, and of its notifications made to utilities,
272 developers, designers, and excavators, under sections [3781.27](#) and [3781.28](#) of the
273 Revised Code. The records of a protection service shall identify by reference
274 number, the notifications it received regarding a proposed excavation site, the
275 notifications it provided regarding a proposed excavation site, and the date and
276 time of each notification.

277 (D) Each utility fully participating in a protection service pursuant to this section
278 shall also participate in its affiliated positive response system. Each utility
279 participating in a protection service on a limited basis shall directly communicate to
280 the excavator the presence or absence of any conflict between the existing
281 underground utility facilities and the proposed excavation site.

282 **(E) Whosoever violates section 3781.26 of the Revised Code shall be**
283 **penalized in accordance with section 3781.37.**

284 3781.261 Protection of underground utility facilities training.

285 (A) An excavator, contractor, or utility that utilizes a protection service shall obtain
286 training in the protection of underground utility facilities. An excavator, contractor,
287 or utility shall be deemed to have obtained that training if the excavator,
288 contractor, or utility is a member of a protection service or a statewide association
289 representing excavators, contractors, or utilities and the service or association
290 provides that training. An excavator, contractor, or utility also may obtain the
291 training from such a service or association without becoming a member.

292 3781.27 Developer or designer notifying protection service of intended excavation.

293 (A) In order to ascertain the name of each utility with underground utility facilities
294 located at the proposed excavation site and the types and tolerance zones of those
295 facilities based on current records of the utility, any developer who is planning a
296 project that will require excavation or the designer employed by the developer for
297 the project shall notify a protection service of the location of the proposed
298 excavation site.

299 (B) Except in the case of limited basis participants, the protection service shall
300 provide notice of the proposed excavation to each participant in the service that has
301 underground utility facilities in the area of the proposed excavation site. Except as

302 provided in section [3781.271](#) of the Revised Code, in the case of limited basis
303 participants, the protection service shall notify the developer or the designer
304 employed by the developer of the name of each limited basis participant with
305 underground utility facilities within the municipal corporation or township and
306 county of the proposed excavation site, and the developer or designer shall contact
307 that utility.

308 (C)

309 (1) Each utility that has any underground utility facilities in the area of the
310 proposed excavation site shall notify the developer or the designer employed by the
311 developer of the locations and description of the utility's underground utility
312 facilities located at the proposed excavation site in accordance with division (C)(2)
313 of this section. The utility shall make this notification within ten working days of
314 receiving a notice under division (B) of this section or by a later date acceptable to
315 the developer or designer and utility. In the case of an interstate hazardous liquid
316 pipeline or an interstate gas pipeline, the utility also shall provide written notice to
317 the developer or designer of any special notification requirements.

318 (2) If requested by the developer or the designer employed by the developer, each
319 utility shall do one of the following in order to comply with the notification
320 requirements of division (C)(1) of this section:

321 (a) Mark the location of the underground utility facilities, other than those
322 facilities serving single-family or two-, three-, or four-unit dwellings, at the
323 proposed excavation site in accordance with the marking standards described
324 in division (C) of section [3781.29](#) of the Revised Code;

325 (b) Provide digital or paper drawings, or both, that meet both of the following
326 requirements:

327 (i) They are drawn to scale and include locatable items. Locatable
328 items may include poles, pedestals, back of curb, sidewalk, edge of
329 pavement, centerline of ditch, property lines, and other similar items.

330 (ii) They depict the location of the underground utility facilities.

331 Compliance with division (C)(2) of this section does not relieve a utility from
332 compliance with the marking requirements of section [3781.29](#) of the Revised Code.

333 (D) The utility shall determine if any relocation, support, or removal, or protective
334 steps beyond those described in divisions (A)(1) to (5) of section [3781.30](#) of the
335 Revised Code are required in order to prevent disturbance or interference with the
336 underground utility facilities during excavation. The utility shall determine whether
337 it will permit the developer or the designer employed by the developer to make
338 those adjustments, and, if the adjustments are to be made by the utility, a
339 reasonable amount of time necessary to make those adjustments.

340 (E)

341 (1) Based on the information provided pursuant to division (C) of this section, the
342 developer or the designer employed by the developer shall indicate the
343 approximate locations of underground utility facilities either on or with the plans
344 prepared for the project. The developer or designer shall include with the plans the
345 names, addresses, and telephone numbers of utilities with underground facilities at
346 the excavation site, indicating which utilities are limited basis participants; the
347 name and telephone number of any appropriate protection service; and any
348 required adjustments as described in division (D) of this section, including the
349 reasonable time necessary for the utility to make those adjustments. In the case of
350 an interstate hazardous liquid pipeline or an interstate gas pipeline, the developer
351 or designer also shall include any special notification requirements.

352 (2)

353 (a) Except as otherwise provided in division (E)(2)(b) of this section, the developer
354 or designer shall provide the plans to the commercial excavator prior to entering
355 into a contract that involves such excavation. If the developer does not prepare
356 written plans or have any written plans prepared, the developer shall otherwise
357 provide the approximate locations, identifying information on the utilities,
358 information on required adjustments, and any special notification requirements to
359 the commercial excavator before excavation begins.

360 (b) When the developer is a utility, the utility shall provide either the plans or the
361 approximate locations, identifying information on the utilities, information on
362 required adjustments, and any special notification requirements to the excavator
363 before excavation begins.

364 (3) The developer or designer shall design the project taking into account the
365 approximate location of existing underground utility facilities in order to prevent, as
366 far as is practicable, disturbance or interference with those facilities.

367 (4) When a project includes installation of new underground utility facilities, the
368 developer or designer shall attempt to design the installation so that at least a
369 twelve-inch clearance is provided between the facilities. No facility shall be installed
370 with less than a twelve-inch clearance unless the owners of existing facilities are
371 notified, in writing, prior to installation.

372 (F)

373 (1) This section does not apply in the case of a utility making emergency repair to
374 its own underground utility facility.

375 (2) This section does not apply in the case of the owner of the types of real
376 property identified in divisions (C)(1) to (4) of section [3781.25](#) of the Revised Code,
377 unless the owner employs a designer to make written plans for work that will
378 involve excavation. If the owner employs a designer, the designer shall contact a

379 protection service and utilities that are limited basis participants in accordance with
380 divisions (A) and (B) of this section, and shall include in or with the plans the
381 information required under division (E) of this section. The owner shall provide that
382 information to the excavator.

383 **(G) Whosoever violates section 3781.27 of the Revised Code shall be**
384 **penalized in accordance with section 3781.37.**

385 3781.271 Modification of one-call notification system.

386 Beginning on July 1, 2013, each protection service shall reasonably modify its one-
387 call notification system so as to permit the reasonable identification of the location
388 of a proposed excavation site in a manner in which the protection service may then
389 notify any potentially affected limited basis participants. Each member of a
390 protection service, including limited basis participants, shall be responsible for
391 providing current contact information to the protection service.

392 **(A) Whosoever violates section 3781.271 of the Revised Code shall be**
393 **penalized in accordance with section 3781.37.**

394 3781.28 Excavator notifying protection service or pipeline owner.

395 (A) Except as otherwise provided in divisions (C), (D), (E), and (F) of this section,
396 at least forty-eight hours but not more than ten working days before commencing
397 excavation, the excavator shall notify a protection service of the location of the
398 excavation site and the date on which excavation is planned to commence.

399 (B) On receipt of notice under division (A) of this section, the protection service
400 shall provide to each utility with underground utility facilities located at the
401 excavation site, notice of the proposed excavation.

402 (C) In the case of an interstate hazardous liquids pipeline or interstate gas pipeline,
403 the excavator shall comply with the special notice requirements of the public safety
404 program of the owner of the pipeline as indicated in the plans or otherwise provided
405 to the excavator in accordance with division (E) or (F)(2) of section [3781.27](#) of the
406 Revised Code.

407 (D) If it has been determined pursuant to division (D) of section [3781.27](#) of the
408 Revised Code that relocation, support, removal, or protective steps are necessary,
409 the excavator shall provide earlier notice to the utility in order to provide the utility
410 with reasonable time to coordinate making the adjustments with actual excavation.

411 (E) If an excavation will cover a large area and will progress from one area to the
412 next over a period of time, the excavator shall provide written notice of excavation
413 with projected timelines for segments of the excavation as the excavation
414 progresses in order to coordinate the marking of underground utility facilities with
415 actual excavation schedules. Under such circumstances, the utility and excavator

416 shall determine a mutually agreed upon marking schedule based on the project
417 schedule. Once such a schedule is established, the marking and notification
418 requirements set forth in division (A)(1) of section [3781.29](#) of the Revised Code
419 shall not apply.

420 (F)

421 (1) In the case of a utility that is making an emergency repair to its own
422 underground utility system or a governmental entity making an underground
423 emergency repair to traffic control devices, as defined in section [4511.01](#) of the
424 Revised Code, used on any street or highway under the entity's jurisdiction, the
425 utility or governmental entity shall notify a protection service and each limited basis
426 participant of the excavation site. This notice need not occur before commencing
427 excavation.

428 (2) In the case of an excavation at the site of real property of the type described in
429 divisions (C)(1) to (4) of section [3781.25](#) of the Revised Code:

430 (a) If the owner of the property is the excavator, this section does not apply unless
431 the excavation is planned for an area where a utility easement is located, a public
432 right-of-way, or where utility facilities are known to serve the property.

433 (b) If the owner of the property employs an excavator, the excavator shall comply
434 with the requirements of this section. If the owner did not employ a designer to
435 make written plans, the excavator shall provide the notice required under this
436 section to a protection service and to each utility that is a limited basis participant
437 in a protection service that has underground utility facilities within the municipal
438 corporation or township and county of the excavation site, as indicated by the
439 protection service.

440 **(G) Whosoever violates section 3781.28 of the Revised Code shall be**
441 **penalized in accordance with section 3781.37.**

442 3781.29 Marking location of facilities or give notice of no facilities at site.

443 (A)

444 (1) Except as otherwise provided in division (A)(2) of this section, within forty-eight
445 hours of receiving notice under section [3781.28](#) of the Revised Code, each utility
446 shall review the status of its facilities within the excavation site, locate and mark its
447 underground utility facilities at the excavation site in such a manner as to indicate
448 their course, and report the appropriate information to the protection service for its
449 positive response system. If a utility does not mark its underground utility facilities
450 or contact the excavator within that time, the utility is deemed to have given notice
451 that it does not have any facilities at the excavation site. If the utility cannot
452 accurately mark the facilities, the utility shall mark them to the best of its ability,
453 notify the excavator using the positive response system that the markings may not

454 be accurate, and provide additional guidance to the excavator in locating the
455 facilities as needed during the excavation.

456 (2) In the case of an interstate hazardous liquids pipeline or an interstate gas
457 pipeline, the owner of the pipeline shall locate and mark its pipeline within the time
458 frame established in the public safety program of the owner.

459 (B) Unless a facility actually is uncovered or probed by the utility or excavator, any
460 indications of the depth of the facility shall be treated as estimates only.

461 (C)

462 (1) Except as provided in division (C)(2) of this section, a utility shall mark its
463 underground facilities using the following color codes:

Type of Underground Utility Facility	Color
Electric power transmission and distribution	Safety red
Gas transmission and distribution	High visibility safety yellow
Oil transmission and distribution	High visibility safety yellow
Dangerous materials, product lines, and steam lines	High visibility safety yellow
Telephone and telegraph systems	Safety alert orange
Police and fire communications	Safety alert orange
Cable television	Safety alert orange
Water systems	Safety precaution blue
Slurry systems	Safety precaution purple
Sewer lines	Safety green.

464 (2) All underground facilities shall be marked in accordance with the Ohio universal
465 marking standards that are on file with the Ohio utilities protection service.
466 Industry representatives serving on Ohio damage prevention councils shall review
467 the marking standards every two years.

468 (D) Except as otherwise provided in divisions (E) and (F) of this section, prior to
469 notifying a protection service of the proposed excavation, an excavator shall define
470 and premark the approximate location. Proposed construction or excavation
471 markings shall be made in white through the use of an industry-recognized method
472 such as chalk-based paint, flags, stakes, or other method applicable to the specific
473 site and when possible shall indicate the excavator's identity by name,
474 abbreviation, or initial.

475 (E)

476 (1) Before beginning an emergency excavation, or as soon as possible thereafter,
477 an excavator shall make every effort to notify a protection service of the
478 excavation. In providing notification, the excavator shall provide, at a minimum:

479 (a) The name of the individual notifying the protection service;

480 (b) The name, address, any electronic mail address, and any telephone and
481 facsimile numbers of the excavator;

482 (c) The specific location of the excavation site;

483 (d) A description of the excavation.

484 (2) Upon receiving the information set forth in division (E)(1) of this section, the
485 protection service shall provide the excavator with a reference number and a list of
486 utilities that the protection service intends to notify. The protection service shall
487 immediately notify each utility that according to the registration information
488 provided under section [3781.26](#) of the Revised Code has facilities located within the
489 designated area of the emergency excavation.

490 (3) Any utility notified of an emergency excavation may inspect all of its
491 underground utility facilities located at the emergency excavation site and may take
492 any otherwise lawful action it considers necessary to prevent disturbance to or
493 interference with its facilities during excavation.

494 (F) An excavator is not required to premark the approximate location of an
495 excavation as provided in division (D) of this section in any of the following
496 situations:

497 (1) The utility can determine the precise location, direction, size, and length of the
498 proposed excavation site by referring to the notification provided by the protection
499 service pursuant to sections [3781.27](#) and [3781.28](#) of the Revised Code.

500 (2) The excavator and the affected utility have had an on-site, preconstruction
501 meeting for the purpose of premarking the excavation site.

502 (3) The excavation involves replacing a pole that is within five feet of the location of
503 an existing pole.

504 (4) Premarking by the excavator would clearly interfere with pedestrian or vehicular
505 traffic control.

506 **(G) Whoever violates section 3781.29 of the Revised Code shall be**
507 **penalized in accordance with section 3781.37.**

508 3781.30 Duties of excavator.

509 (A) When making excavations using traditional or trenchless technologies, the
510 excavator shall do all of the following:

511 (1) Maintain reasonable clearance between any underground facility and the cutting
512 edge or point of powered equipment;

513 (2) Protect and preserve the markings of tolerance zones of underground utility
514 facilities until those markings are no longer required for proper and safe
515 excavations;

516 (3) When approaching and excavating within the tolerance zone of underground
517 utility facilities with powered equipment, require an individual other than the
518 equipment operator, to visually monitor the excavation activity for any indication of
519 the underground utility facility;

520 (4) Conduct the excavation within the tolerance zone of underground utility facilities
521 in a careful , prudent, and nondestructive manner, when necessary, in order to
522 prevent damage;

523 (5) Excavate up to the total depth of the excavation to either determine the precise
524 location of underground utility facilities or verify that the total depth of excavation
525 is free of such facilities;

526 (6) As soon as any damage is discovered, including gouges, dents, or breaks to
527 coatings, cable sheathes, and cathodic protection anodes or wiring, report the type
528 and location of the damage to the utility and permit the utility a reasonable amount
529 of time to make necessary repairs;

530 (7) Immediately report to the utility, the protection service, and, if necessary, to
531 the appropriate law enforcement agencies and fire departments by calling 9-1-1,
532 any damage to an underground utility facility that results in escaping flammable,
533 corrosive, explosive, or toxic liquids or gas, and take reasonable appropriate actions
534 needed to protect persons and property and to minimize safety hazards until those
535 agencies and departments and the utility arrive at the scene.

536 (B) When utilizing trenchless excavation methods, the excavator must comply with
537 the following requirements, in a manner consistent with division (A) of this section:

538 (1) Expose and confirm all underground utility facilities at each crossing point by
539 the proposed excavation in a nondestructive manner to the installation depth of the
540 new facility;

541 (2) Expose all parallel underground utility facilities in a nondestructive manner at
542 the beginning and end of each trenchless excavation to the installation depth of the
543 new facility. If the proposed alignment is within the tolerance zone of any parallel
544 underground utility facility, the underground utility facility shall be exposed every
545 one hundred feet.

546 (3) Ensure that the final product installation maintains the proper clearances of
547 existing underground utility facilities as determined pursuant to division (E)(4) of
548 section [3781.27](#) of the Revised Code.

549 **(C) Whosoever violates section 3781.30 of the Revised Code shall be**
550 **penalized in accordance with section 3781.37.**

551 3781.31 Notifying of commencement of excavation or of removal of markings.

552 (A) When a utility marks its underground utility facilities in accordance with section
553 [3781.29](#) of the Revised Code, the utility may request that the excavator provide
554 prior notice to the utility of the actual commencement of the excavation. An
555 excavator that receives a request for notice under this division shall provide the
556 notice to the utility at least one full working day prior to the commencement of
557 excavation. The excavator may make this notice by telephone.

558 (B) If the markings of underground utility facilities made under section [3781.29](#) of
559 the Revised Code are destroyed or removed before excavation is completed, the
560 excavator shall notify the utility through the protection service that the markings
561 have been destroyed or removed, and the utility shall remark the facilities in
562 accordance with section [3781.29](#) of the Revised Code.

563 **(C) Whosoever violates section 3781.31 of the Revised Code shall be**
564 **penalized in accordance with section 3781.37.**

565 3781.32 Connections or tie-ins within right-of-way.

566 (A) Any connections or tie-ins to existing utility services within a public right-of-way
567 shall comply with permit requirements of the public authority that has jurisdiction
568 over that right-of-way.

569 (B) A developer or the designer employed by the developer shall not require, as a
570 condition for entering into a contract for a project that will require excavation, that
571 responsibility for performance of duties imposed under sections [3781.25](#) to [3781.32](#)
572 of the Revised Code shall be assumed by a person other than the person on whom
573 those duties are imposed under those sections. This division does not prohibit a
574 utility from entering into any contract for the performance of duties that are
575 imposed on a utility under those sections.

576 (C) Nothing in sections [3781.25](#) to [3781.32](#) of the Revised Code shall be construed
577 to require a utility to relocate its underground utility facilities located at an
578 excavation site.

579 **(D) Whosoever violates section 3781.32 of the Revised Code shall be**
580 **penalized in accordance with section 3781.37**

581

582 **3781.33 Mandatory Reporting of Violations**

583
584 **(A) Each excavator, designer, and/or operator of an underground utility**
585 **facility shall report to the enforcement agent or its designee probable**
586 **violation of ORC 153.64 and 3728.25-3728.32 including those that do or do**
587 **not result in damage to facilities within 30 working days of the probable**
588 **violation or ~~of the operator's~~ actual knowledge of the probable violation.**

589 ~~**(B) Each excavator shall report to the enforcement agent or its designee**~~
590 ~~**probable violations of ORC 153.64 and 3728.25-3728.32 including those**~~
591 ~~**that do or do not result in damage to underground utility facilities within**~~
592 ~~**30 working days of the probable violation or of the excavator's actual**~~
593 ~~**knowledge of the probable violation.**~~

594 ~~**(C) Each Designer shall report to the enforcement agent or its designee**~~
595 ~~**probable violation of ORC 153.64 and 3728.25-3728.32. Including those**~~
596 ~~**that do or do not result in damage to underground utility facilities,**~~
597 ~~**within 30 working days of the probable violation or of the designer's actual**~~
598 ~~**knowledge of the probable violation.**~~

599 ~~**(BD) The Public Utilities Commission shall accept reports of probable**~~
600 ~~**violations from members of the public and other parties not subject to**~~
601 ~~**mandatory reporting under this section. The Commission shall review**~~
602 ~~**these reports in the same manner as those received by mandatory**~~
603 ~~**reporting under 3781.33(A)-(C).**~~

604 ~~**(CE) Notification under this section does not relieve any person (s) of**~~
605 ~~**emergency reporting requirements under 3781.30 (a) (6 & 7).**~~

606 ~~**(DF) Whosoever violates section 3781.33 of the Revised Code shall be**~~
607 ~~**penalized in accordance with section 3781.37**~~

608
609
610
611
612
613 **3781.34 Public Utilities Commission Jurisdiction**

614 **(A) Enforcement for probable violations of Revised Code sections 153.64**
615 **and 3781.25-3781.33 shall be made under the Public Utilities Commission.**
616 **The Commission's enforcement authority is limited to the underground**
617 **utility damage prevention statutes found in revised Code sections 153.64**
618 **and 3781.25-3781.33 and restricted to those probable violations reported**
619 **to the Commission through the centralized complaint reporting system as**
620 **described in section (B) 1 of this section. Nothing in this section is**
621 **intended to limit existing powers of any authority as conferred under**
622 **another section of the Revised Code, Administrative Code, federal statutes**
623 **or federal regulations.**

624 **(B) The Commission may promulgate rules necessary and appropriate to**

- 625 **(1) Establish a centralized complaint reporting system using a toll-**
626 **free phone number that is available to all contractors, utility**
627 **operators, designers, and the general public in accordance with**
628 **Section 3781.33.**
- 629
- 630 **(2) Establish a uniform complaint form to record at a minimum the**
631 **complainant's name and identifying information and the nature and**
632 **details of the complaint.**
- 633
- 634 **(3) Establish guidelines for consistent application of penalties, non-**
635 **monetary penalties, and corrective action plans under Section**
636 **3781.36 in concurrence with the Underground Technical Committee.**
- 637
- 638 **(4) Establish a procedure to investigate the validity of the complaint**
639 **using information provided by, but not limited to, the complaint**
640 **reporting system in accordance with the Underground Technical**
641 **Committee.**
- 642
- 643 **(5) Gather information to hear and resolve complaints concerning**
644 **failure to comply with the provisions of Revised Code sections 153.64**
645 **and/or 3781.25-3781.33.**
- 646
- 647 **(6) Establish procedures for taking nominations to the Underground**
648 **Technical Committee and for presentation to the Governor.**
- 649

650 **3781.35 Underground Technical Committee**

- 651 **(A) Industry representatives serving on the Ohio Underground Damage**
652 **Prevention Councils that are registered with the Ohio Utilities Protection**
653 **service as of January 1, 2014 shall establish a nominating council to**
654 **develop a submission list of technically qualified individuals to the**
655 **Commission in accordance with 3781.34 (B) (6). The nominating council**
656 **shall:**
- 657 **(1) Attempt to have ~~equal~~ representation of industry stakeholders.**
- 658
- 659 **(2.) Develop a list of qualifications for applicants to the Underground**
660 **Technical Committee.**
- 661
- 662
- 663 **(B) The Governor shall appoint members to an Underground Technical**
664 **Committee in accordance with procedures established through 3781.34 (B)**
665 **(6) to assist the Commission in the enforcement of the Act. Underground**
666 **Technical Committee members shall serve as an entity to provide subject**
667 **matter expertise in Commission investigations as well as a body for review**
668 **of contested Notices of Determination. Underground Technical Committee**

669 shall perform additional duties as may be assigned by the Commission
670 from time to time. Persons appointed to the Underground Technical
671 Committee shall have expertise with the operation of 153.64 and 3781.25-
672 3781.33 and shall be actively involved in damage-prevention activities at
673 the regional or state level.

674
675 (C)The Underground Technical Committee shall meet in accordance with E
676 (i) of this section to review contested Notices of Determination and
677 penalty recommendations relative to such violations of the Act. A quorum
678 of 51% of the underground technical committee members shall be required
679 for a vote to occur. Following such review, the Underground Technical
680 Committee shall make its recommendations for review by the Commission
681 regarding resolution of such contested violations.. In order to demonstrate
682 agreement by the Underground Technical Committee any
683 recommendations must meet 4/5 majority (80%) vote. If majority
684 agreement can not be reached, the Commission will be notified that no
685 recommendation will be provided due to "failure to reach majority
686 recommendation".

687
688 (D) The Underground Technical Committee shall consist of 13
689 representative and 13 alternates of each of the following industry
690 stakeholder groups: 3 members from the petroleum and natural gas
691 industry, , Municipality, Electricity, Cable, Telephone, z Professional
692 Locator, Design Engineer and 4 commercial excavators. A majority as
693 defined in (B) of this section shall be present to constitute a quorum. The
694 Underground Technical Committee representatives shall be limited to one 2
695 year term as an alternate and one two year term as the representative.
696 Term limits will not be imposed until the UTC has been established and
697 operated for one year. Following the one year mark, the term limits shall
698 be enforced.

699
700 (E) The Underground Technical Committee shall promulgate rules
701 necessary and appropriate to the functioning of the Underground Technical
702 Committee, but shall

- 703 i. Establish a schedule for the frequency of meetings
- 704 ii. Delineate the committees practice and procedure concerning
705 the performance of duties assigned under sections ORC
706 Sections 3781.36 and 3781.37
- 707 iii. In concurrence with ~~Be approved by~~ the Commission

708
709
710 3781.36 Enforcement Procedures

711
712 (A) Upon receipt of a report or other information concerning a probable
713 violation of the Act, the Commission shall serve a "notice of apparent
714 violation" upon any such respondents within 30 working days. ~~The notice~~
715 of probable violation shall contain:
716 (1) An identification of the date of the probable violation

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- 717 (2) Identification of the probable violator
718 (3) Reference to the statute that was violated;
719 (4) A brief description of the manner in which the violation is alleged to
720 have occurred;
721 (5) Instructions regarding the process to be followed by the Commission in
722 regard to the notice of a probable violation.

723 (B) The respondent shall confirm receipt of the Notice within 10 working
724 days. Acknowledgement may be delivered via mail, electronic mail,
725 telephone or other method that is agreed to by the respondent and the
726 Commission. For Notices that do not automatically generate verifiable
727 documentation, the Commission shall note and document the date and
728 time of respondent's confirmation of receipt.

729 (1) The respondent may agree with the notice of probable violation.
730 This acknowledgement of probable violations will be included in the
731 respondents confirmation of receipt. Penalties may be reduced as
732 itemized in section 3781.37 (C)

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733 (C) The Commission shall conduct an investigation to examine all the
734 relevant facts regarding the probable violation. The investigation may
735 include requests for, among other things, records verification, informal
736 meetings, teleconferences, and photo-documentation. Responses to
737 reports of probable violations may be provided to the Commission in
738 writing, by phone, fax, e-mail or in person. Response to requests for
739 information shall be made within fifteen (15) working days of the receipt
740 of the notice, unless such time is extended by the Commission or its
741 investigator pursuant to a written request before the expiration of such
742 fifteen (15) working day period.

743 (1) Failure to respond in a timely manner to the Commission's
744 information request shall conclusively establish the occurrence of the
745 violation described in the notice of probable violation and will
746 constitute a waiver of the right of the respondent to contest the
747 Notice of probable Violation.

749 (D) Within ninety (90) working days after the ~~report discovery~~ of a
750 probable violation, but no later than one year following the occurrence of
751 the probable violation, the staff shall notify the respondent of the
752 disposition of the probable violation. The disposition notice will be either a
753 "notice of dismissal" or a "notice of intent to assess penalty" for the
754 violation

755
756 (1) The Notice of Dismissal shall contain
757 (a) An identification of the date of the probable violation and
758 entity;
759 (b) A brief description of the event and probable violation

760 ~~**(c) A statement that the Commission has investigated the**~~
761 ~~**probable violation and will take no further action on the issue.**~~
762

763 **1(2) The Notice of Intent to Assess Penalty shall contain:**

764 ~~**(a) An identification of the date of the violation and entity**~~
765 ~~**about which the violation occurred.**~~

766 ~~**(b) Reference to the statute that was violated.**~~

767 ~~**(c) A brief description of the manner in which the violation is**~~
768 ~~**alleged to have occurred.**~~

769 ~~**(d) The amount of the penalty intended to be assessed.**~~

770 ~~**(ae) A statement that respondent's failure to contest the**~~
771 ~~**violation will conclusively establish the occurrence of the**~~
772 ~~**violation.**~~

773 ~~**(bf) A description of the manner in which the respondent may**~~
774 ~~**make payment of the penalty.**~~

775 **(E) One or more probable violations directed to a single entity may be**
776 **combined or merged. The combination of violations should be used to**
777 **aggregate probable violations stemming from a single event or multiple**
778 **events with similar facts. A respondent may request in writing that certain**
779 **probable violations be segregated from the combined notice.**

780 **(F) A respondent who contests a Notice of Intent to Assess Penalty, or a**
781 **Combined Notice, may within fifteen (15) working days may submit a**
782 **request for Hearing. This request shall be in writing, and may be in any**
783 **legible form which identifies the matter to be discussed and communicates**
784 **the desire to have a Hearing concerning the matter. The respondent shall**
785 **designate whether the Hearing is to be through an Alternative Dispute**
786 **Conference or through a Commission hearing.**

787 **(1)The request for Hearing shall contain the name, address, and**
788 **telephone number of the respondent or the respondent's authorized**
789 **representative. The request may be submitted via ordinary United**
790 **States mail, facsimile transmission, or electronic mail.**

791 **(G) Request for hearing Utilizing the Alternative Dispute Conference. The**
792 **respondent may file a request for hearing utilizing Alternative Dispute**
793 **conference, A Hearing may occur in person, by telephone, or through**
794 **written communications, and may be held with the respondent or the**
795 **respondent's authorized representative. The respondent shall have the**
796 **opportunity to present reasons why the violation did not occur as alleged,**
797 **mitigating circumstances regarding the amount of the penalty, or any**
798 **other information relevant to the action proposed to be taken**

799 **(1) The Alternative Dispute Conference Hearing shall examine all the**
800 **relevant facts regarding the apparent violation. The Arbitrator may**
801 **review additional or new information in its hearing. Information may**
802 **include, among other things, presentation of records, documents,**

803 procedures, written statements of witnesses, live witness
804 statements, and photo-documentation.

805 (2) Failure to appear for an Alternative Dispute Conference Hearing
806 will conclusively establish the occurrence of the violation described
807 in the notice of apparent violation and will constitute a waiver of the
808 right of the respondent to contest the penalty proposed in the notice
809 of apparent violation.

810 (3) An Alternative Dispute Conference shall be held under the
811 direction of an arbitrator who is a member of the American
812 Arbitration Association.

813 (4) A settlement agreement shall contain an agreed penalty, an
814 agreed non-monetary penalty, an agreed corrective action plan,
815 another agreed remedy, or withdrawal of the violation.

816 (5) In negotiating a settlement agreement, the Arbitrator may
817 consider items as enumerated in Revised Code Section 3781.37(B)
818 and (C).

819 (6) The terms of the binding agreement will be known to the
820 respondent and the Commission and may include confidentiality and
821 disclosure limitations. The Commission shall retain documentation of
822 the violation and terms.

823 (7) when the Commission and the respondent reach agreement or
824 the Arbitrator renders a decision regarding the violation, the amount
825 of a penalty to be assessed, corrective action plan, or other agreed
826 remedy, the agreement shall be reduced to writing in a Settlement
827 Agreement. Such an agreement shall be signed by the Commission
828 and by the respondent and shall be fully binding upon the
829 Commission and the respondent upon execution.

830
831 (H) A request for hearing utilizing the Commission. The respondent may
832 file a request for hearing utilizing the Commission process. Commission
833 hearing may occur in person, by telephone, or through written
834 communications, and may be held with the respondent or the respondent's
835 authorized representative. The respondent shall have the opportunity to
836 present reasons why the violation did not occur as alleged, mitigating
837 circumstances regarding the amount of the penalty, or any other
838 information relevant to the action proposed to be taken

839 (1) The Commission Hearing shall examine all the relevant facts
840 regarding the apparent violation. The Commission may review
841 additional or new information in its hearing. Information may

842 include, among other things, presentation of records, documents,
843 procedures, written statements of witnesses, live witness
844 statements, and photo-documentation.

845 (2) Failure to appear for a Commission Hearing will conclusively
846 establish the occurrence of the violation described in the notice of
847 apparent violation and will constitute a waiver of the right of the
848 respondent to contest the penalty proposed in the notice of apparent
849 violation.

850 (3) If the Commission and the respondent reach agreement
851 regarding the violation, the amount of a penalty to be assessed,
852 corrective action plan, or other agreed remedy, the agreement shall
853 be reduced to writing in a Settlement Agreement. Such an
854 agreement shall be signed by the Commission and by the respondent
855 and shall be fully binding upon the Commission and the respondent
856 upon execution, except as otherwise provided in this rule.

857 (4) A settlement agreement shall contain an agreed penalty, an
858 agreed non-monetary penalty, an agreed corrective action plan,
859 another agreed remedy, or withdrawal of the violation.

860 (5) In negotiating a settlement agreement, the Commission may
861 consider items as enumerated in Revised Code Section 3781.37(B)
862 and (C).

863 (I) Following a Commission hearing during which there was no Settlement
864 Agreement, the Commission will serve a "Notice of Determination" upon
865 the respondent. The Notice of Determination shall be signed by the director
866 and shall contain:

867 (1) An identification of the date of the violation occurred.

868 (2) Reference to the statute which was violated.

869 (3) A brief description of the violation, the amount of the penalty
870 intended to be assessed

871 (4) Instructions regarding the manner in which the respondent may
872 serve a timely request for either an Underground Technical
873 Committee review to contest the violation or the proposed penalty

874 (5) A notice that failure to File a Request for an Underground
875 Technical Committee review will conclusively establish the
876 occurrence of the violation described in the notice of determination
877 and will constitute a waiver of the right of the respondent to contest
878 liability to the state for the penalty in the notice of determination.

879 **(J) Contest utilizing the Underground Technical Committee review. Within**
880 **fifteen (15) working days following service by the Commission of a Notice**
881 **of Determination, the respondent may file a "Request an Underground**
882 **Technical Committee review " with the Commission. The Request for an**
883 **Underground Technical Committee review shall be in writing and shall**
884 **contain the name, address, and telephone number of the respondent and**
885 **the case number assigned to the matter by the Commission. The request**
886 **for an Underground Technical Committee review shall be signed by the**
887 **respondent or its authorized representative. A copy of the Notice of**
888 **Determination served by the Commission upon the respondent shall be**
889 **attached to the Request for an Underground Technical Committee review.**

890 **(1) The staff shall notify the respondent of the date and time of the**
891 **Underground Technical Committee review by service of a scheduling**
892 **notice by ordinary United States mail, facsimile transmission, or**
893 **electronic mail, at least thirty days prior to the date and time**
894 **established for the review.**

895 **(K) The Underground Technical Committee will conduct a review of the**
896 **investigation materials gathered by staff and/or the Commission. The**
897 **Underground Technical Committee examine all the relevant facts**
898 **regarding the notice of determination and may include additional or new**
899 **information in its review. The review may include, among other things,**
900 **presentation of records, documents, procedures, written statements of**
901 **witnesses, live witness statements, and photo-documentation. an**
902 **Underground Technical Committee review may be conducted by phone,**
903 **video conference, or in person.**

904 **(1) After review, the Underground Technical Committee shall report**
905 **to the Commission the findings of its review. The Underground**
906 **Technical Committee may**

907 **(a) Recommend no action and dismiss the apparent violation;**

908 **(b) Recommend that a warning letter be issued to the person**
909 **alleged to have committed the violation;**

910 **(c) Recommend Settlement Agreement terms**

911 **(d) Recommend training be required for violations of the Act;**

912 **(e) Recommend an increase or a decrease in the civil penalties**
913 **assessed for violations**

914 **(L) The Commission shall consider the recommendations of the**
915 **Underground Technical Committee. The Underground Technical Committee**
916 **recommendations may be accepted in whole, in part, or dismissed. The**
917 **Commission shall issue a Final Notice of Determination after review of the**
918 **Commission shall issue a Final Notice of Determination after review of the**
919 **Commission shall issue a Final Notice of Determination after review of the**
920 **Commission shall issue a Final Notice of Determination after review of the**
921 **Commission shall issue a Final Notice of Determination after review of the**
922 **Commission shall issue a Final Notice of Determination after review of the**
923 **Commission shall issue a Final Notice of Determination after review of the**

924 **Underground Technical Committee recommendation. If the Commission**
925 **does not accept the UTC recommendation, a letter of explanation will be**
926 **issued detailing the reason for divergence from recommendation.**
927

928
929 **(M) Respondent may appeal the Final Notice of Determination through**
930 **appropriate jurisdictional court.**
931

932
933 **3781.37 Penalty Structure**
934

935 **(A) The Commission shall, in accordance with this section, impose an**
936 **administrative penalty on any person who violates Revised Code sections**
937 **153.64 and/or 3781.25-3781.33. Monetary penalties shall start at \$1000**
938 **plus applicable multipliers as defined in subsection (B) of this section**
939 **when applicable.**
940

941 **(B) The amount of any monetary penalty assessed in an enforcement**
942 **action will be determined on an individual case-by-case basis for each**
943 **violation.**

944 **(1a) The Commission shall take into consideration the violator's**
945 **(a1) history of previous violations including the number of**
946 **previous violations within the previous 24 months of the**
947 **current violation**
948 **(b2) the nature, circumstances and gravity of the violation of**
949 **the Act;**
950 **(c3) the degree of the violator's culpability; and**
951 **(d4) such other factors as may be appropriate**
952

953 **(2b) The following shall be used as Penalties shall be progressive**
954 **and multiplied in accordance with C (1). ~~multiplier guidelines~~**
955 **~~(1) 2-5 violations on record result in double penalty~~**
956 **~~(2) 6-9 violations on record result in triple penalty~~**
957 **~~(3) 10 or more violations on record result in 4 times the~~**
958 **~~penalty~~**
959

960 **(3c) If the violation of sections ORC 153.64 or 3728.25-3728.32**
961 **results in a damage to the underground utility facility, the penalty**
962 **may increase by \$5,000 - \$50,000 per occurrence. No penalty shall**
963 **exceed \$250,000 for any series of related violations.**
964

965 **(C) The recommended monetary penalty for a violation may be reduced if**
966 **the violator agrees to a settlement before the Commission or its designee**
967 **conducts an administrative hearing to resolve a violation.**
968

969 **The following may be considered in penalty reduction or multipliers:**
970 **(1) the demonstrated good faith of the party charged;**

971 **(2) the violator's demonstrated history of one call and/or**
972 **excavation practices in the previous 12 months, including but**
973 **not limited to**

974 **(a) number of locate requests received and responded to**

975 **(b) number of successful locates completed**

976 **(c) number of one calls placed**

977 **(d) number of excavations completed with no violations**

978
979 **(3) the prospective effect of the penalty on the ability of the**
980 **violator to conduct business;**

981 **(4) any good faith effort on the part of the violator in**
982 **attempting to achieve compliance after the violation was**
983 **identified;**

984 **(5) the violator's ability to pay the penalty**

985
986 **Once a hearing is convened, the opportunity for the violator to**
987 **reduce the basic monetary penalty is no longer available.**

988
989 **(D) The establishment of these penalty guidelines shall in no way limit the**
990 **Commission or its designee the discretion to assess administrative**
991 **penalties in any amount up to the statutory maximum when warranted by**
992 **the facts in any case. Administrative penalties imposed pursuant to this**
993 **section are also in addition to any other remedies or forfeitures provided**
994 **by law. Nothing in this section shall affect any civil remedy for damage to**
995 **an underground facility or for actual damage to any person(s) or property.**

996 **(E) Depending upon the nature and the consequences resulting from a**
997 **violation of this chapter, the Commission may impose a non-monetary**
998 **penalty. Options for non-monetary penalties include**

999 **(a) a warning,**

1000 **(b) attendance at a safety training course at the expense of the**
1001 **violator**

1002 **(c) a directive that utility determine, map, and document for future**
1003 **reference the location of the facility for a reasonable distance, as**
1004 **determined by the Commission**

1005 **(d) a directive that the violator submit a corrective action plan to the**
1006 **Commission that outlines how the violator will comply promptly. If**
1007 **the violator is not able to return to compliance promptly, the violator**
1008 **shall describe its plan a method to achieve compliance. Failure to**
1009 **comply with the details of a corrective action plan will result in the**
1010 **violator being subject to monetary penalties.**

1011 **(e) a directive to implement procedures to mitigate the likelihood of**
1012 **damage to underground facilities**

1013 **(f) other non-monetary penalty as determined appropriate by the**
1014 **Commission**

1015
1016

1017 **3781.38 Payment of Penalties**

1018
1019 **(A) The Commission will establish The Underground Utility Damage**
1020 **Prevention Fund to be used by the Commission for administering damage**
1021 **prevention grants. All penalties collected pursuant to section Revised Code**
1022 **3781.37 shall be deposited into the Underground Utility Damage**
1023 **Prevention Fund.**

1024
1025 **(B) The Underground Damage Prevention Fund shall be composed entirely**
1026 **of monies generated by the enforcement of this chapter. Funds shall be**
1027 **used to support any one or more of the following: (i) public awareness**
1028 **programs established by a notification center or other entity; (ii) training**
1029 **and education programs for excavators, operators, line locators, and other**
1030 **persons; and (iii) programs providing incentives for excavators, operators,**
1031 **line locators, and other persons to reduce the number and severity of**
1032 **violations of this section. The Commission shall establish required**
1033 **elements for any program established under clause (B)(ii) or (iii).**

1034
1035 **(C) The Commission shall determine the appropriate allocation of any**
1036 **funds dispersed through grants. The Commission shall promulgate**
1037 **necessary rules for the gathering, review, and acceptance of damage**
1038 **prevention grants. The Commission shall promulgate necessary rules for**
1039 **the dispensation and tracking of monies from the Underground Damage**
1040 **Prevention Fund.**

1041
1042 **(D) Any monies remaining in Underground Damage Prevention Fund at the**
1043 **end of the fiscal year shall not revert to the general fund, but shall remain**
1044 **in the Underground Damage Prevention Fund.**

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