

Amendment to:

Underground Damage Prevention Coalition, Positive Response Subcommittee, Legislative Language-Final Draft, October 19, 2011

Offered by:

Positive Response Subcommittee

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

(A)(1) Except as otherwise provided in division (A)(2) of this section, within forty-eight hours of receiving notice under section 3781.28 of the Revised Code, each utility shall locate and mark the approximate location of its underground utility facilities at the excavation site in such a manner as to indicate their course, and report the appropriate information to the protection service for the positive response system. Failure of a utility who is required to be a member to comply with the provisions of this article may not prevent the excavator from proceeding after the wait time prescribed in this section (3781.29 (A)(1)). ~~If a utility does not mark its underground utility facilities or contact the excavator within forty-eight hours of receiving notice under section 3781.28 of the Revised Code, the utility is deemed to have given notice that it does not have any facilities at the excavation site.~~ If the utility cannot accurately mark the approximate location, the utility shall mark the approximate location to the best of its ability, and notify the excavator, designer, or developer through the positive response system that the markings may not be accurate, and provide additional guidance to the excavator, designer, or developer in locating the facilities as needed during the excavation.

Underground Damage Prevention Coalition

Positive Response Subcommittee

Legislative Language-Final Draft

October 19, 2011

Please find below proposed legislative language related to positive response. Please note these are changes made to existing state law which can be located in the Ohio Revised Code sections 153.64, 3781.25, 3781.26 and 3781.29. If language is proposed to be removed, it is struck through (~~example~~), if language is proposed to be added, it is underlined (example) and if language is new to this draft it has been highlighted (example).

153.64 Protecting underground utility facilities during construction of public improvement.

(A) As used in this section:

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

(2) "Public authority" includes the state, or a county, township, municipal corporation, school district, or other political subdivision, or any public agency, authority, board, commission, instrumentality, or special district of or in the state or a county, township, municipal corporation, school district, or other political subdivision.

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

(4) "Underground utility protection service" means a notification center not an owner of an underground utility facility, existing for the purpose of receiving notice from public authorities and from other persons that plan to prepare plans and specifications for, or engage in, public improvements involving digging, blasting, excavating, or other underground construction activities and distributing this information to its members. "Registered underground utility protection service" means an underground

utility protection service registered with the secretary of state and the public utilities commission of Ohio pursuant to division (F) of this section.

(5) "Owner of underground utility facility" does not include telephone companies classified as medium or small under rule 4901-7-01 of the Ohio Administrative Code, owners of pipelines that conduct liquid petroleum products, or cable television companies to the extent that it requires membership in an underground utility protection service.

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

(7) "Positive response system" means an electronic system facilitated by a protection service allowing a utility to communicate the status of existing underground utility facilities as it pertains to the locate requests. The protection service provides the positive response system to make this information available to the excavator, designer, or developer.

(B) In any public improvement which may involve underground utility facilities, the public authority, prior to preparing plans and specifications, shall contact the registered underground utility protection services and the owners of underground utility facilities that are not members of a registered underground utility protection service for the existence and location of all underground utility facilities within the construction area. The public authority shall include, in the plans and specifications for such improvement, the identity and location of the existing underground utility facilities located in the construction area as provided to the public authority by the owner of the underground utility facility and the name, address, and telephone number of each owner of any underground utility facilities in the construction area that does not subscribe to a registered underground utility protection service. Any anticipated temporary or permanent relocation of underground utility facilities deemed necessary by the public authority shall be negotiated or arranged by the public authority with the owners of the underground utility facilities prior to the start of construction. If a temporary or permanent relocation of utility facilities is necessary, the owner of the underground utility facility shall be given a reasonable time to move such utility facilities unless the contractor to whom the contract for a public improvement is awarded or its subcontractor agrees with the owner of the underground utility facility to coordinate relocation with construction operations. The public authority, within ten calendar days after award of a contract for a public improvement, shall notify in writing all owners of underground utility facilities known to be located in the construction area of the public improvement of the name and address of the contractor to whom the contract for the public improvement was awarded. Where notice is given in writing by certified mail, the return receipt, signed by any person to whom the notice is delivered, shall be conclusive proof of notice.

(C) The contractor to whom a contract for a public improvement is awarded or its subcontractor, at least two working days, excluding Saturdays, Sundays, and legal holidays, prior to commencing construction operations in the construction area which may involve underground utility facilities, shall cause notice to be given to the registered underground utility protection services and the owners of underground utility facilities shown on the plans and specifications who are not members of a registered underground utility

protection service, in writing, by telephone, or in person. Where notice is given in writing by certified mail, the return receipt, signed by any person to whom the notice is delivered, shall be conclusive proof of notice. The owner of the underground utility facility, within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, after notice is received, shall stake, mark, or otherwise designate the location of the underground utility facilities in the construction area in such a manner as to indicate their course together with the approximate depth at which they were installed. The owner of the underground utility facility shall then provide positive response in accordance with Sections 3781.26 and 3781.29 of the ORC. The marking or locating shall be coordinated to stay approximately two days ahead of the planned construction.

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

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

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

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

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

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

(F) An underground utility protection service shall register with the secretary of state and the public utilities commission of Ohio, identifying its name, address, telephone number, membership, and other pertinent information. The secretary of state and commission shall establish procedures for accepting such registrations and providing information about registrants to public authorities on request.

3781.25 One-call utility protection service definitions.

As used in sections 3781.25 to 3781.32 of the Revised Code:

(A) "Protection service" means a notification center, but not an owner of an individual utility, that exists for the purpose of receiving notice from persons that prepare plans and specifications for or that engage in excavation work, that distributes this information to its members and participants, and that is registered with the secretary of state and the public utilities commission of Ohio under division (F) of section 153.64 of the Revised Code on March 14, 1989.

(B) "Underground utility facility" means any item buried or placed below the surface of the earth or submerged under water for use in connection with the storage or conveyance of water or sewage; electronic, telephonic, or telegraphic communications; television signals; electricity; crude oil; petroleum products; artificial or liquefied petroleum; natural gas; coal; steam; hot water; or other substances; except that it does not include private septic systems in a one-family or two-family dwelling not connected to any other system.

(C) "Utility" means any owner of an underground utility facility, including any public authority as defined in section 153.64 of the Revised Code, that owns an underground utility facility, except the owners of the following types of real property with respect to any underground utility facility located on that property:

- (1) The owner of a single-family or two-, three-, or four-unit residential dwelling;
- (2) The owner of an apartment complex;
- (3) The owner of a commercial or industrial building or complex of buildings, including but not limited to, factories and shopping centers;
- (4) The owner of a farm.

(D) "Approximate location" means the site of the underground utility facility including the width of the underground utility facility plus eighteen inches on each side of the facility.

(E) "Days" excludes Saturdays, Sundays, and legal holidays as defined in section 1.14 of the Revised Code and "hours" excludes hours on Saturdays, Sundays, and legal holidays.

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

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

(H) "Excavation" means the use of tools, powered equipment, or explosives to move earth, rock, or other materials in order to penetrate or bore or drill into the earth, or to demolish any structure whether or not it is intended that the demolition will disturb the earth. "Excavation" includes such agricultural operations as the installation of drain tile, but excludes agricultural operations such as tilling that do not penetrate the earth to a depth of more than twelve inches. "Excavation" excludes any activity by a governmental entity which does not penetrate the earth to a depth of more than twelve inches. "Excavation" excludes any underground mining operations that do not involve disturbance to the earth's surface.

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

(J) "Excavator" means the contractor or other person who is responsible for making the excavation.

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

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

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

(N) "Positive response system" means an **electronic** system facilitated by a protection service allowing a utility to communicate the status of existing underground utility facilities as it pertains to the locate requests. The protection service provides the positive response system to make this information available to the excavator, designer, or developer.

3781.26 Protection service for underground utility facilities.

(A) Each utility that owns or operates underground utility facilities shall participate in and register the location of its underground utility facilities with a protection service that serves the area where the facilities are located. A utility may elect to participate in the service on a limited basis and if it does so, it

shall register the location of its underground utility facilities only by identifying the municipal corporations, and outside the limits of a municipal corporation, the townships by county in which it has facilities. The service shall establish reasonable fees for limited basis participants.

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

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

(D) Each utility fully participating in a protection service pursuant to this section shall also participate in its affiliated positive response system. Each utility participating in a protection service on a limited basis shall directly communicate the status of existing underground utility facilities as it pertains to the locate requests.

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

(A)(1) Except as otherwise provided in division (A)(2) of this section, within forty-eight hours of receiving notice under section 3781.28 of the Revised Code, each utility shall locate and mark the approximate location of its underground utility facilities at the excavation site in such a manner as to indicate their course, and report the appropriate information to the protection service for the positive response system. Failure of a utility who is required to be a member to comply with the provisions of this article may not prevent the excavator from proceeding but shall bar the utility from recovery of any costs associated with damage to its underground facilities resulting from such failure, except for damage caused by the willful or intentional act of the excavator. ~~If a utility does not mark its underground utility facilities or contact the excavator within forty-eight hours of receiving notice under section 3781.28 of the Revised Code, the utility is deemed to have given notice that it does not have any facilities at the excavation site.~~ If the utility cannot accurately mark the approximate location, the utility shall mark the approximate location to the best of its ability, and notify the excavator, designer, or developer through the positive response system that the markings may not be accurate, and provide additional guidance to the excavator, designer, or developer in locating the facilities as needed during the excavation.

If you have questions, please contact the Positive Response Subcommittee Co-Chairs Bill Hocevar, bhocevar@tglcc.com, or Andy Orth, andy.orth@gcww.cincinnati-oh.gov.