



**Public Utilities  
Commission**



**Damage Prevention Enforcement  
Annual Report to the General Assembly  
for the 2023 Calendar Year**

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## **Introduction**

Beginning on January 1, 2016, pursuant to Ohio Revised Code (ORC) 4913.01 et seq. and ORC 3781.25 - 3781.38, the Public Utilities Commission of Ohio (PUCO) was given the authority to enforce Ohio's utility damage prevention laws in conjunction with a newly-created panel of experts called the Underground Technical Committee (UTC).<sup>1</sup> Damage prevention laws are designed to maintain public safety when excavating around utility facilities and to ensure the reliability of those facilities. With the authority provided to the UTC and PUCO, entities such as utilities, excavators, developers, and designers, who have duties and obligations under Ohio's damage prevention law, have a venue to report alleged compliance failures and seek enforcement of those safety laws.

## **Committee Membership Activity**

The UTC is a 17-member panel of experts in the subjects of excavation and utility protection. See Table 1 for a list of the members, the industries that each represents, and each of their appointing authorities.

The law requires the UTC to meet as often as necessary, but not less than once every three months. In 2023, the UTC met seven times<sup>2</sup> and decided 124 cases.

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<sup>1</sup> Am. Sub. S.B. No. 378 of the 130<sup>th</sup> General Assembly.

<sup>2</sup> February 9, March 30, May 4, July 13, September 7, October 26, and December 7.

**Table 1. Underground Technical Committee Members<sup>3</sup>**

<b>Appointing Authority</b>	<b>Industry</b>	<b>Representative</b>	<b>Term Expires on December 31:</b>
Senate President	Commercial Excavator	Mark Potnick	2026
Senate President	Natural Gas Transmission	David Koren	2025
Senate President	Oil & Gas Producers	Mark Jordan	2025
Senate President	Cable Service Providers	Zach Allen	2027
Senate Minority Leader	Commercial Excavator	John Kelly	2024
Speaker of the House	Commercial Excavator	Joe Igel (Chairman)	2026
Speaker of the House	Natural Gas Distribution	Kurt Waite	2025
Speaker of the House	Electric Cooperatives	Jason Woods	2025
Speaker of the House	Locators	Joe Costell	2027
House Minority Leader	Commercial Excavator	William Hocevar	2027
Governor	Electric Utility	David Losinski	2026
Governor	Telephone	Joshua Motzer	2026
Governor	Municipal Corporations	Michael R. Perry	2025
Governor	ODOT	Wendi Snyder	2027
Governor	General Public	Jim Jewell	2027
Governor	Hazardous Liquid Pipeline	Jennifer Reams (Secretary)	2025
Governor	Designers/Developers/Surveyors	Kevin Baxter	2026

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<sup>3</sup> Pursuant to ORC 3781.34(D), members appointed to the UTC serve four-year terms.

### **Underground Facilities Protection Administrative Fund – Registration**

To cover the costs associated with operation and of enforcement by the UTC, ORC 4913.03 requires each utility, excavator, developer, and designer who participates in the Ohio Utilities Protection Service (OH811) to register with the PUCO and pay a safety registration fee of no more than \$50.

The PUCO partnered with OH811 to identify utilities, excavators, developers, and designers affected by the statute and develop a list of companies that would potentially be required to pay a registration fee. Through conservative fiscal management, the PUCO only required a fee of \$35 for 2023. The registration process and associated collection of fees is still ongoing. To date the PUCO has collected \$133,665. A similar registration is planned for 2024.

### **Underground Facilities Protection Fund – Fines**

Fines totaling \$38,600 were assessed by the UTC in 2023. A total of \$11,350 in fines were collected in 2023, the remaining fines were referred to the Ohio Attorney General for collections.

Funds from collected fines were deposited in the underground facilities protection fund to be used for the grant program as required by ORC 4913.31. There is currently \$31,841.82 in this fund. The fund may be used for:

1. Public awareness programs established by a protection service.
2. Training and education programs for excavators, operators, designers, persons who locate underground facilities, or other persons; and/or
3. Programs which provide incentives for excavators, operators, persons who locate underground utility facilities, or other persons to reduce the number and severity of compliance failures.

## **Investigations**

Complaints are voluntarily submitted by an “aggrieved person,” who is a person with duties and obligations under Ohio damage prevention law and who is directly involved with or impacted by the alleged violation. PUCO Staff received a total of 140 complaint submissions in 2023.

Upon receipt of a complaint, PUCO staff promptly begins an investigation. The first step in the investigation process is determining whether the submission is a valid complaint. In 2023, staff determined 18 complaints were invalid, made by parties who did not meet the aggrieved person definition, or were submitted more than 90 days past the date of discovery.

Complaint investigations largely consist of collecting statements, documents, photographs, videos, and other evidence from the complainant and the alleged violator (respondent). Once all the evidence has been collected from both parties, PUCO staff then compiles it into a case file, known as a report of inquiry.

## **Reports of Inquiry**

The UTC received 124 reports of inquiry from PUCO staff for consideration in 2023. The UTC is tasked with reviewing each report to determine if the respondent violated state law based upon the information in the record. The UTC members are given the opportunity to review the information in the report of inquiry prior to the meeting and request further information from the complainant, the respondent, PUCO staff, or any other source that may be helpful in making their decision.

## **UTC Decisions**

The UTC holds public meetings, under the direction of the chairperson and with assistance from the PUCO. During the meetings, the UTC deliberates the facts of the complaint and holds a vote to determine if a violation occurred.

If a majority cannot be reached or the majority agrees that no violation occurred, then no enforcement action is taken.

If a majority agrees that one or more violations occurred, the UTC chooses an appropriate fine and/or penalty based upon several factors, including the severity of the violation and the respondent’s violation history.

The UTC has the authority to issue a fine or some other nonmonetary penalty such as a warning letter, training requirement, a requirement for a process improvement plan, or other required actions the UTC deems appropriate. Fines can be issued for up to \$2,500 for a first offense and up to \$5,000 for subsequent offenses. The PUCO will then enforce the penalty or fine on behalf of the UTC. Parties may appeal the UTC’s decision to the PUCO.

Of the 124 cases reviewed in 2023, the UTC found that the respondent violated the damage prevention law in 100 cases, no violation occurred in 19 cases. The UTC failed to achieve a majority to act in three cases, the complaint failed to meet the statutory definition for a valid complaint in one case, and one case was withdrawn at the request of the complainant.

The violations determined by the UTC are summarized in Table 2, below:

**Table 2. 2023 UTC Violation Determinations**

<b>Action</b>	<b>Cases</b>
R.C. 3781.28(A) – Excavator failed to call OH811.	39
R.C. 3781.28(C) – Interstate / Haz Liquid special notice requirements not met.	3
R.C. 3781.29(A)(1) – Failure of a utility to mark facilities within 48 hours.	53
R.C. 3781.29(C)(2) – Failure to mark using Universal Marking Standards.	1
R.C. 3781.29(D) – Failure of an excavator to define excavation location.	1
R.C. 3781.30(A)(1) – Failure to maintain reasonable clearance while excavating using powered equipment.	1
R.C. 3781.30(A)(6) – Failure to report damage to the utility.	1
R.C. 3781.31(A) – Failure to provide requested prior notice before excavating.	1
<b>Total</b>	<b>100</b>

As cases that go before the UTC are complaint driven, the frequency of violations in Table 2 may or may not be representative of excavation damage prevention violations throughout Ohio.

Of the 100 cases in which a violation occurred, penalties were issued in 52 instances. Penalties consisted of a requirement for the respondent to submit a written process improvement plan (PIP) detailing how an organization will modify its business rules and processes to improve performance, a requirement for the respondent to attend prescribed excavation damage prevention training, or both. In 35 instances, the UTC determined that a violation occurred while a respondent was in the process of implementing a previously required PIP or was relatively minor in nature and issued a warning letter to the respondent.

The UTC issued monetary fines on 48 occasions for a total of \$38,600. These fines were issued due to a violation creating a hazardous situation that threatened public safety, a respondent having an extensive history of noncompliance, or a respondent failing to complete previously assigned requirements to complete training or a PIP. \$11,350 of these fines have been collected, and the remainder referred to the Ohio Attorney General for collections.

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