

**Underground Damage Prevention Authority
Administrative Rules**

**Chapter 910-X-1
General Provisions**

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910-X-1-.01 Purpose and Statutory Authority

This chapter establishes the Underground Damage Prevention Authority and its Executive Committee, as created under Ala. Code § 37-15-10.1, et seq., for the purpose of enforcing Ala. Code § 37-15-1-10.2, et seq., and for reviewing penalty provisions and the adequacy of the enforcement process. The Authority and its enforcement activities are not intended to be funded by appropriations from the state budget.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1, et seq., § 37-15-10.2, et seq.

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-1-.02 Definitions

- (1) Terms in these rules shall be the same definition as found in Ala. Code § 37-15-2, et seq., or defined below:
 - (a) Authority - The Underground Damage Prevention Authority created under Ala. Code § 37-15-10.1, et seq.
 - (b) Authority Board - The Underground Damage Prevention Board created under Ala. Code § 37-15-10.1, et seq.
 - (c) Damage - Includes, but is not limited to, the substantial weakening of structural or lateral support of an underground facility, penetration or destruction of any underground facility's protective coating, housing or other protective device, and the severance (partial or complete) of any underground facility, but does not apply to any operator's abandoned underground facility.
 - (d) Emergency Excavation or Demolition - An excavation or demolition that is required to eliminate an imminent danger to life, health, property, or the environment or required for the repair or restoration of operator service that is required to be performed before the notification and response procedures required in Ala. Code § 37-15-4 and § 37-15-6, et seq. may be fully utilized.
 - (e) Excavate or Excavation - Operation for the purpose of the movement or removal of earth, rock, or other material by mechanized equipment or explosive device and includes, but is not limited to, augering, backfilling, blasting, boring, digging, ditching, drilling, grading, pile-driving, plowing-in, pulling-in, ripping, scraping, sub-soiling, trenching and tunneling. Excavate or excavation does not include routine roadway maintenance activities carried out by or for those responsible for publicly-maintained roadways, provided that

the activities occur entirely within the right of way of a public road, street, or highway; are carried out with reasonable care so as to protect any utility facilities placed in the right-of-way by permit; are carried out within the limits of any original excavation on the traveled way, shoulders or drainage ditches of a public road, street, or highway; and, if involving the replacement of existing structures, including traffic control devices, replace such structures in their approximate previous locations and at their approximate previous depth. Excavate or excavation shall not include routine railroad maintenance activities conducted within the track structure and its adjacent right of way, provided the activities are performed by railroad employees or railroad contractors and are carried out with reasonable care so as to protect any underground facilities placed in the railroad right-of-way by agreement with the railroad. Nothing in this chapter shall modify or abrogate any contractual provision entered into between any railroad and any other party owning or operating an underground facility or underground utility lines within the railroad's right-of-way.

- (f) Excavator - Any person who engages in excavation.
- (g) Executive Committee - The executive committee created under Ala. Code § 37-15-10.1, et seq.
- (h) Frivolous Complaint - A complaint filed with the Authority that is entirely without merit and is made with the intention of causing inconvenience, harassment or expense.
- (i) Mark or Marking - The use of stakes, flags, paint, buoys, or clearly identifiable materials placed on the surface of the ground or water to show the approximate location of underground facilities.
- (j) Mechanized Equipment - Equipment powered or energized by any motor, engine, hydraulic or pneumatic device and is used for excavation or demolition work including, but not limited to, tractors, trenchers, bulldozers, power shovels, augers, backhoes, scrapers, pile drivers, drills, cable and pipe plows, or other equipment used for plowing-in or pulling-in cable or pipe.
- (k) Near Miss - An event where damage did not occur, but a clear potential for damage was identified.
- (l) Noninvasive Method of Excavation - A method of excavation that does not compromise the integrity of the underground facility. These methods include, but are not limited to, hand digging, pot holing, soft digging, vacuum excavation methods, or other methods approved by the operator.
- (m) Notification Area - An area or territory which an operator designates as the area where the operator wishes to receive notifications for any excavation in that area. The notification area should encompass the underground distribution system or network of the operator.
- (n) Operator - Any person, governmental agency, or political subdivision, or its agents, who owns or operates a public or private underground facility which furnishes services, information, or materials, or transports or transmits electric energy, light, water, steam, oil, gases, gas, mixture of gases, petroleum, petroleum products, hazardous or flammable liquids, toxic or corrosive fluids and gases, or items of like nature and telecommunications, cable television,

water, drainage, sewage or other systems of like nature. The term operator does not apply to any entity listed above if all of the underground facilities owned and operated by the entity are for the sole use of the entity and are located solely on the entity's own property or on property over which the entity has rights of operation.

- (o) Person - An individual, joint venture, partnership, association, authority, cooperative, firm, corporation, governmental entity, or any subdivision or instrumentality of that entity and its employees, agents, or legal representatives.
- (p) Tolerance Zone - The width of the underground facility plus 18 inches on either side of the outside edge of the underground facility on a horizontal plane.
- (q) Underground Facility - Any cable, pipeline, duct, wire, conduit, or other similar installation, installed underground or underwater, by which an operator transports or delivers materials, information, or services.
- (r) Willful Noncompliance - The intentional refusal or failure to perform, or comply with, a duty created or imposed by this chapter or by the rules promulgated pursuant to this chapter.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-2

History: New Rule: Filed September 21, 2020; effective November 14, 2020. .

**Underground Damage Prevention Authority
Administrative Rules**

**Chapter 910-X-2
Organization**

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910-X-2-.01 Duties of the Authority

- (1) The duties of the Authority are described in Ala. Code § 37-15-10.1, et seq., and include, but are not limited to the following:
- (a) Enforce the provisions of Ala. Code § 37-15- 1-10.2, et seq.
 - (b) Conduct meetings as described in Ala. Code § 37-15-10.1 - 10.2, et seq., and the rules adopted by the Authority.
 - (c) Elect an Executive Committee from among the Authority members as described in Ala. Code § 37-15-10.1, et seq.
 - (d) Promulgate rules and regulations to carry out its responsibilities described in Ala. Code § 37-15-1, et seq.
 - (e) Enter into contracts as the Authority deems necessary to carry out its responsibilities.
 - (f) Enter into an interagency agreement with the Attorney General’s office to serve as legal counsel.
 - (g) Oversee the development of, or contract for, the development and administration of the designated training program.
 - (h) Manage the Underground Damage Prevention Fund created in Ala. Code § 37-15-10, et seq.
 - (i) Assess and collect funds as described in Ala. Code § 37-15-10(e), et seq., as deemed necessary to carry out its responsibilities.
 - (j) Evaluate and revise the enforcement program process and penalty structure by promulgating rules if the current structure does not meet the purpose and intent of this chapter or federal law.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1 (h) (1-5)

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-2-.02 Authority Organization

(1) The Authority shall be composed of a board of underground facility protection stakeholders. The board shall be composed on one subject matter expert representative from each of the following stakeholders. The Authority consists of seventeen members, appointed as follows:

(a) By the Governor:

1. One representative of Alabama County Engineers
2. One representative of the cable television industry
3. One representative of the electric utility industry
4. One representative of the municipal utility operator industry
5. One representative of the natural gas distribution industry
6. One representative of the one call notification center
7. One representative of the professional excavator industry
8. One representative of the professional road builders industry
9. One representative of the land survey industry
10. One representative of the telecommunications industry
11. One representative of the transmission pipeline industry
12. One representative of the utility facility locating industry
13. One representative of the water utility industry
14. One representative of the wastewater industry

(b) By specified entities:

1. One representative of the Alabama Attorney General's Office
2. One representative of the Alabama Public Service Commission– gas pipeline safety
3. One representative of the Alabama Department of Transportation

(2) No member of the board, individually or jointly, shall be civilly liable for acts within the scope of his or her duties as a board member which are made in good faith and are absent unreasonable, wanton, willful, intentional conduct or a violation of federal law.

(3) The members of the Authority board shall serve without compensation.

(4) Nothing in this chapter shall grant the Authority jurisdiction over damage to utilities located above the ground.

(5) Board members shall not participate in any enforcement action decisions pertaining to the entity they represent.

(6) The Authority shall be governed by the Alabama Administrative Procedures Act.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1 (h), (i), (j), (k), (m)

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-2-.03 Authority Member Terms

- (1) The initial authority board shall be appointed with staggering terms as determined by the Governor.
- (2) After the initial appointment, each stakeholder representative shall serve a three-year term.
- (3) No person shall be appointed for more than two full consecutive terms with the exception of the following:
 - (a) Alabama Attorney General's Office
 - (b) Alabama PSC – gas pipeline safety
 - (c) Alabama Department of Transportation
 - (d) One Call Notification Center.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1 (d)

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-2-.04 Officers

- (1) The Authority shall elect a chairman and other officers as the Authority deems necessary.
- (2) The officers of the Authority shall be as follows:
 - (a) Chairman - The Chairman shall preside at all meetings of the Authority and discharge the duties of the presiding officer, shall be the principal executive officer of the Authority, may sign contracts and other instruments authorized by the Authority, except in cases where the Authority shall expressly delegate that authority to another member, and shall perform whatever other duties the Authority may from time to time prescribe. The Chairman may also function as the Chair of the Executive Committee.
 - (b) Vice-Chairman - The Vice-Chairman shall, in the absence of the Chairman, perform the duties and exercise the powers of the Chairman. The Vice-Chairman shall also perform whatever duties and have whatever powers the Authority may from time to time assign. The Vice-Chairman may also function as the Vice-Chairman of the Executive Committee.
 - (c) Secretary - The Secretary shall attend all meetings of the Authority and shall keep or cause to be kept, true and complete minutes of the proceedings of those meetings. The Secretary shall give or cause to be given, notice of all meetings of the Authority, shall be the Public Records Compliance Officer and whatever additional duties the Authority may from time to time prescribe.
 - (d) Treasurer - The Treasurer shall keep full and accurate accounts of receipts and disbursements and shall deposit all Authority monies and other valuable effects in the name and to the credit of the Authority in a depository or depositories designated by the Authority. The Treasurer shall disburse the

funds of the Authority and shall render to the Chairman or the Authority, whenever they may require it, an account of the transactions as Treasurer and the financial condition of the Authority.

- (3) **Combination of Offices.** Nothing herein shall prohibit the combination of the duties of Secretary and Treasurer and those offices being held by one member of the Authority.
- (4) **Other Officers.** Such other officers as are created from time to time by the Authority shall have such duties as may be assigned to them by the Authority in the minutes of meetings duly adopted, or by Resolution of the Authority.
- (5) **Terms.** The term of each office shall be two years. Officers shall not hold a particular office for more than two consecutive two-year terms without a majority vote of the Authority members.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1 (g)

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-2-.05 Authority Operations

- (1) **Rule Making Authority.** The Authority shall make such rules and regulation as may be necessary to carry out the provisions of the statute.
- (2) **Meetings and Notice.** The Authority shall meet at the location and on the date and time set by the Chairman upon at least five business days' notice provided by United States mail, electronic mail or personal delivery to every Authority member. Scheduled meeting dates, times, and locations shall be published in the Authority's minutes.
- (3) The Authority shall meet no more than quarterly based on need relative to the hearing of enforcement proceeding appeals.
- (4) **Meetings.** Members of the Authority board and executive committee may participate in a meeting of the board or committee by means of telephone conference, video conference, or similar communications equipment by means of which all persons participating in the meeting may hear each other at the same time. Participation by such means shall constitute presence in person at a meeting for all purposes.
- (5) **Quorum.** A quorum will be represented from a simple majority of the current Authority Membership.
- (6) **Voting.** All members of the Authority including the Chairman shall be entitled to vote and to make or second motions. A majority vote of those present is required

to pass a motion. Members expecting to be absent for a vote may provide written comments as to their position; however, they may not grant a vote by proxy.

(7) Action without a Meeting. Any action required or permitted may be taken without a meeting if the action is noticed to all Authority Members and approved by a majority of the Members of the Authority. The action must be evidenced by one or more written consents describing the action taken, and delivered to the Secretary for inclusion in the minutes or filed with the appropriate records.

(8) Robert's Rules of Order. The Chairman shall conduct each Authority meeting in accordance with Robert's Rules of Order. Committee meetings of the Authority shall be conducted in a like manner.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1 (g) (h), (l) and § 37-15-10.2 (i)

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-2-.06 Committees of the Authority

(1) The Chairman, with concurrence of the Authority, may from time to time establish and abolish such committees from among the members of the Authority as may be deemed necessary, expedient or to contribute to the performance of the duties of the Authority. The Chairman shall appoint a Chair for each such committee.

(2) The Chairman, with concurrence of the Authority, deems it advantageous or beneficial to the Authority, the Chairman may appoint members to a committee who are not members of the Authority.

(3) A quorum shall be a majority of the committee. The rules relating to the Authority shall apply to all committees.

(4) The Authority Board shall elect an executive committee made up of five representatives from the Authority Board as provide in Ala. Code § 37-15-10.1, et seq., excluding those entities representing a state agency, who will be responsible for levying civil penalties and taking actions as described in Ala. Code § 10, 10.1 and 10.2, et seq.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-2-.07 Executive Committee

(1) The Executive Committee is charged with reviewing the alleged violations complaints and any documentation regarding the complaint and making any

needed recommendation for penalty action.

- (2) The duties of the Executive Committee include, but are not limited to the following:
 - (a) Conduct meetings and reviews of alleged violation complaints as described in Ala. Code § 37-15-10.2, et seq., and the rules promulgated by the Authority.
 - (b) Determine whether violations have occurred.
 - (c) Dismiss those complaints in which it determines a violation has not occurred.
 - (d) Upon finding that a violation has occurred, determine and levy penalties, order training, and otherwise take action as described in Ala. Code § 37-15-10.2, et seq., and the rules promulgated by the Authority.
- (3) An Executive Committee member shall not participate in any discussion or vote on any of the following matters:
 - (a) One in which the Executive Committee member or the member's employer is the complainant or respondent.
 - (b) One in which the member reasonably believes that he/she is unable to act impartially and independently as a result of the circumstances related to an alleged violation.
- (4) An Executive Committee member disqualified from voting on a matter shall notify all members of the Executive Committee of said disqualification, immediately upon discovery that a basis for disqualification exists. Another Authority member may be appointed to the Executive Committee on a temporary basis to replace the recused Executive Committee Member during the designated complaint hearing.
- (5) The term of those serving on the Executive Committee shall be two years. No Executive Committee member shall serve more than two consecutive two-year terms without a majority vote of the Authority members.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

**Underground Damage Prevention Authority
Administrative Rules**

**Chapter 910-X-3
Enforcement of Violations**

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910-X-3.01 Complaint Filing

- (1) Any person who violates Ala. Code § 37-15-1, et seq., may be reported to the authority for the alleged violation.
- (2) The complaint must be made no later than 30 days after the known occurrence of the violation. A complaint may be filed as information only and designated not to be pursued under the enforcement provisions.
- (3) The Executive Committee may review complaints from any person of alleged violation of Ala. Code § 37-15-1, et seq.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.2

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-3-.02 Complaint Process

- (1) The Authority shall utilize the services of the Alabama Public Service Commission to provide administrative support, subject to the concurrence by the Authority Board. The Public Service Commission shall charge the expenses associated with the administrative duties of the Authority back to the Authority, subject to the concurrence of the Authority Board. The administrative support provided by the Alabama Public Service Commission to the Authority is in an administrative capacity only and shall not expand the jurisdiction of the Alabama Public Service Commission in any way.
- (2) The complaint process shall include:
 - (a) A completed complaint form submitted to the Authority administrator in the designated manner outlined by the Authority.
 - (b) The complaint form must include all required information designated on approved complaint form.

- (c) Upon receipt of a complaint of a violation of this chapter, the administrator, operating on behalf of the Authority, shall provide notice to the reported violator advising that a complaint of violation has been made setting out the time and place of the alleged violation, the identity of who reported the violation, his or her right to file a written response within 14 days, and his or her right to appeal from an adverse decision.
 - (d) The administrator, acting on behalf of the Authority, shall submit the complaint and documentation to the Executive Committee.
 - (e) The Authority Executive Committee will review the complaint and any documentation regarding the complaint and make any needed recommendation for penalty action.
 - (f) The administrator, operating on behalf of the Authority, shall notify the complainant and the reported violator of any penalty assessed.
 - (g) Once the reported violator is notified of the designated penalty as described in Section 37-15-10, et seq, Code of Ala. 1975, the violator may pay the penalty to the Underground Damage Prevention Fund or dispute the penalty and request a hearing before the full Authority Board.
 - (h) The request for a hearing before the Authority Board must be done within 30 days of the issuance of notification of the violation.
 - (i) The full Authority Board shall meet no more than quarterly, based on need. The hearings will be held at the place set forth in the citation notice of hearing. There shall be no presumption of correctness attached to any finding of fact or any assessment of a penalty that is appealed to the Authority Board, and the proceedings and hearing before the Authority Board shall be tried de novo. The complainant must attend the hearing.
- (3) In cases in which a final citation is issued to an alleged violator, the alleged violator may pay the civil penalty and/or perform the ordered training and applicable costs within ninety (90) days of the citation issuance date, and upon payment of the penalty and performance of the ordered training, the matter shall be closed.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.2

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-3-.03 Appeal Process

- (1) The Authority Board in the appeal process has the authority to do the following:
 - (a) Repeal the initial penalty provisions cited for the alleged violation of this chapter.
 - (b) Uphold the initial penalty provisions cited for the alleged violation of this chapter.
 - (c) Issue a new penalty provision related to the alleged violation of this chapter.
 - (d) Issue an order stating the outcome of the hearing including any assigned penalty.

- (2) A person aggrieved by the final order, within 30 days from the date of the final order, may seek judicial review in the circuit court by filing a notice of appeal.
- (3) The Authority may bring an action against any person or entity to collect any fines, penalties or other monies owed to the authority.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.2

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-3-.04 Enforcement Rules

- (1) The Authority will issue an opinion regarding the applicability to specified facts of:
 - (a) a statute administered or enforceable by the Authority; or
 - (b) a rule promulgated by the Authority.
- (2) The Authority may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:
 - (a) the complaint filed is brought forth as a frivolous complaint. The Executive Committee may make the determination that frivolous complaints are subject to the penalty provisions;
 - (b) lack of clarity;
 - (c) the facts presented in the request are not sufficient to answer the question presented;
 - (d) the request fails to contain information by these rules or the complainant failed to follow the procedure set forth in these rules;
 - (e) the question presented by the request concerns the legal validity of a statute or rule;
 - (f) a similar request is pending before this Authority or any agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law;
- (3) A declared opinion of the Authority shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Authority may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed meet the requirements of these rules or that the opinion issued contains a legal or factual error.
- (4) At any point prior to issuance of a citation or show cause letter, the Complainant may notify the administrator or the Executive Committee that the alleged violation form is withdrawn, and the Executive Committee will dismiss the matter against the alleged violator.

- (5) The Authority may bring an action against any person or entity to collect any fines, penalties or other monies owed to the authority.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.1

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-3-.05 Open Records

All complaints filed pursuant to Ala. Code § 37-15-1 et seq., shall not be subject to the Alabama Open Records Act. However, the Authority shall make available, upon request, a summary of a requested complaint after a final resolution has been entered regarding any such complaint requested along with any documents associated with the final resolution of the complaint. However, this restriction shall not prevent a party from obtaining a copy of the complaint by means of a subpoena or other method allowed by the Alabama Rules of Civil Procedure or the Alabama Rules of Criminal Procedures.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.2 (l)

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-3-.06 Open Meetings

The Alabama Open Meetings Act shall apply to all meetings and judicial hearings required pursuant to this chapter, except for those meetings of the Authority in which the initial determination of violation and recommended fine is discussed and determined.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10.3 (l)

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

**Underground Damage Prevention Authority
Administrative Rules**

**Chapter 910-X-4
Designated Penalties**

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910-X-4-.02 Liabilities of Penalty Provisions
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910-X-4-.01 Penalty Provisions

- (1) Any person who violates the provisions of Ala. Code § 37-15, et seq., or the rules adopted under the Authority, shall be subject to a civil penalty as follows:
 - (a) For a first violation, the violator shall complete a course of training concerning compliance or pay a civil penalty in an amount not to exceed five hundred dollars (\$500) per incident, or both.
 - (b) For a second or subsequent violation within a twelve (12) month period, the violator shall complete a course of training concerning compliance or pay a civil penalty in an amount not to exceed one thousand dollars (\$1000) per incident, or both.
 - (c) For a third or subsequent violation within a twelve (12) month period, the violator shall complete a course of training concerning compliance and pay a civil penalty in an amount not to exceed three thousand dollars (\$3,000) per incident.
 - (d) Notwithstanding this subsection, if any violation was the result of gross negligence or willful noncompliance, the violator shall be required to complete a course of training concerning compliance and pay a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) per incident.
- (2) Any person who is required to complete a course of training shall be responsible for paying for the cost of the training. For those instances in which training is ordered, if the person is a firm, partnership, association, corporation, limited liability company, joint venture, department or subdivision of the state or other governmental entity or any other body or organization, it may be required that at least one manager or supervisor thereof attend any training.
- (3) These penalties provided under this section may be subject to periodic review by the Authority Board and revised by rule as needed to ensure enforcement penalties are deemed effective and are in compliance with federal law.
- (4) All penalties recovered in such actions shall be paid into the Underground Damage Prevention Fund.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-4.02 Liabilities of Penalty Provisions

- (1) Enforcement actions do not affect any civil remedies for personal injury or property damage or criminal sanctions except as otherwise specifically provided for in Ala. Code § 37-15-1, et seq.
- (2) Evidence of findings of fact, civil penalties or any of the actions or proceedings shall not be admissible in any other civil causes of actions related to the excavation or damage for which the penalty or fine was issued, however, these materials are discoverable in civil actions arising from the facts herein. The Authority decision shall not limit any person's right to pursue any additional civil remedy otherwise allowed by law.
- (3) No civil penalty may be imposed against an excavator or operator who violates any provisions of Ala. Code § 37-15-1, et seq., if the violation occurred while the excavator or operator was responding to an emergency. Notwithstanding the foregoing, the civil penalty shall be imposed if the violation was willful or malicious.
- (4) Ala. Code § 37-15-1, et seq., shall not be construed to limit any provision of law granting governmental immunity to state or local entities or to impose any liability or duty of care not otherwise imposed by law upon any state or local entity.
- (5) Any person who willfully or maliciously removes or otherwise destroys a marking used by an operator to mark the location of any underground facility, except in the ordinary course of excavation, is guilty of a Class C misdemeanor.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-4.03 Guidelines for Application of Penalties

- (1) The Executive Committee shall determine and assess penalties according to Ala. Code § 37-15-10, et seq. In determining the penalty for a violation, the Executive Committee shall consider the following:
 - (a) The degree of non-compliance;
 - (b) The amount of injury or damage caused;
 - (c) The degree of threat to public safety;
 - (d) The degree of public inconvenience caused as a result of the violation;
 - (e) The number of past violations;
 - (f) Mitigation of the penalty may be shown by "good faith" efforts of the violator to have complied with the provisions of Ala. Code § 37-15, et seq.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10 (d)

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

**Underground Damage Prevention Authority
Administrative Rules**

**Chapter 910-X-5
Underground Damage Prevention Fund**

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910-X-5-.01 Collected Penalties
910-X-5-.02 Payment of Penalties

910-X-5-.01 Collected Penalties

- (1) Monies collected from assessed penalties will be deposited in the Underground Damage Prevention Fund.
- (2) Any monies remaining in the Underground Damage Prevention Fund at the end of the fiscal year shall not revert to the General Fund, but shall remain in the Underground Damage Prevention Fund for the exclusive use of the Authority.
- (3) The expenditures of monies in the Underground Damage Prevention Fund shall be at the discretion of the Authority Board to carry out its duties.
- (4) Excess funds shall be used to support public awareness programs, training and education of excavators, operators, locators, and other persons to reduce the number and severity of violations.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10 (e)

History: New Rule: Filed September 21, 2020; effective November 14, 2020.

910-X-5-.02 Payment of Penalties

Penalties and costs shall be paid to the Authority in any method adopted by the Authority. All penalties recovered shall be paid to the Underground Damage Prevention Fund. The Authority may bring an action against any person or entity to collect any fines, penalties or other monies owed to the Authority.

Author: Underground Damage Prevention Authority

Statutory Authority: Code of Ala. 1975, § 37-15-10

History: New Rule: Filed September 21, 2020; effective November 14, 2020.