

ALABAMA UNDERGROUND DAMAGE PREVENTION AUTHORITY
ADMINISTRATIVE CODECHAPTER 910-X-4
DESIGNATED PENALTIES

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910-X-4-.01 Penalty Provisions.

(1) Any person who violates the provisions of Code of Ala. 1975, §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: Published September 30, 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 Code of Ala. 1975, §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 Code of Ala. 1975, §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) Code of Ala. 1975, §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.

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910-X-4-.03 Guidelines Of Application Of Penalties.

(1) The Executive Committee shall determine and assess penalties according to Code of Ala. 1975, §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 Code of Ala. 1975, §37-15, et seq.

Author: Underground Damage Prevention Authority

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

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