



AMERICAN PETROLEUM INSTITUTE

Ohio

June 1, 2015

Chairman Andre Porter
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

The American Petroleum Institute (API)-Ohio is a state affiliate office of the American Petroleum Institute (API), a national trade association representing over 600 members companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies and contractors that support all segments of the industry.

API Ohio members operate tens of thousands of miles of pipeline throughout Ohio and their underground assets continue to grow as these companies invest billions of dollars in new infrastructure due to the development of shale resources in the Appalachian Basin. Consequently, our industry is a strong supporter of Ohio's underground damage prevent law which protects Ohioans from potentially life threatening incidents caused by companies, governments or others hitting oil and natural gas pipelines, as well as electric, water, sewer, cable, or phone lines when they excavate or otherwise dig, drill or bore underground. Inasmuch, we appreciate the opportunity to submit comments in regards to Ohio Public Utility Commission proposed rulemaking docket 15-282-AU-ORD involving the underground technical committee and protection of underground utility facilities.

Please find these comments within the attachment titled API Ohio Initial Comments-June 1, 2015. Again, we welcome the chance to present these issues and the proposed solutions, which we plan to expand upon during the reply comment period. That said, we would be happy to meet or discuss these issues with the appropriate persons at any time.

Thank you for your time and consideration.

A handwritten signature in blue ink, appearing to read "CBZ...", with a stylized flourish.

Christian B. Zeigler
Executive Director

CBZ/chp

Enclosure

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4901:1-2-01 Definitions.

As used within this chapter, these terms denote the following:

- (A) "Aggrieved person," for purposes of this chapter, shall have the same meaning as defined in division (A) of section 4913.01 of the Revised Code.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Compliance failure," for purposes of this chapter, shall have the same meaning as defined in division (B) of section 4913.01 of the Revised Code.
- (D) "Coordinator" shall be a full-time employee of the commission designated by the director of the service monitoring and enforcement department to assist the underground technical committee in the performance of its duties.
- (E) "Days," when used to compute any period of time prescribed or allowed by these rules, shall not include the date of the act or event from which the designated period of time begins to run. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.
- (F) "Designer," "developer," "excavation," "excavator," "one-call notification system," "person," "protection service," "underground utility facility," and "utility" shall have the same meanings as in section 3781.25 of the Revised Code.
- (G) "Director" means the director of the commission's service monitoring and enforcement department or the director's designee."
- (H) "Filing" means delivery, through paper filing, facsimile transmission (fax) filing, or electronic filing (e-file), to the commission's docketing division in accordance with rule 4901-1-02 of the Administrative Code.

Attachment A
Case No. 15-282-AU-ORD

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- (I) "Hearing" means all proceedings before the commission in a manner consistent with chapter 4903 of the Revised Code.
- (J) "Participants" means the person that requested the inquiry and the person responsible for the compliance failure and any persons permitted to intervene after commencement of a proceeding.
- (K) "Report of inquiry" is a document summarizing the investigation of a compliance failure and reporting on a fine, penalty, or no-penalty determination made by either the underground technical committee or the staff, when applicable.
- (L) "Respondent" means the person responsible for the compliance failure.
- (M) "Staff" means those employees of the commission to whom responsibility has been delegated for administering the provisions of chapter 4913 of the Revised Code, as applicable.
- (N) "Underground technical committee" is a body created pursuant to section 3781.34 of the Revised Code that shall carry out the duties outlined by section 3781.36 of the Revised Code.
- (1) "Violation" means any conduct, act, or failure to act, prohibited by statute or commission rule or order.

Comment [CP1]: Definition needs to be expanded to include all entities which fall under these statutory requirements.

Comment [CP2]: What is the purpose of this definition since it is not referenced anywhere in the rule?

4901:1-2-02 Purpose and Scope.

- (A) This chapter is adopted in compliance with, and under the authority of, division (B) of section 4913.45 and division (F) of section 121.22 of the Revised Code.
- (B) This chapter establishes rules for the underground technical committee and for the protection of underground utility facilities pursuant to chapter 4913 of the Revised Code.

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- (C) This chapter shall apply to all persons with duties and obligations under sections 153.64, 3781.27, and 3781.28 to 3781.32 of the Revised Code and divisions (A) and (B) of section 3781.26 of the Revised Code.
- (D) The commission may, upon application or motion, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

Comment [CP3]: This section is vague. Application and motion by whom? Additional details warranted.

4901:1-2-03 Duties of the underground technical committee.

The underground technical committee shall do the following:

- (A) Coordinate with the commission in carrying out its duties under chapter 4913 of the Revised Code.
- (B) Provide subject matter expertise when requested during inquiries conducted under section 4913.09 of the Revised Code.
- (C) Review reports in accordance with section 4913.15 of the Revised Code.
- (D) Make recommendations under sections 4913.15 and 4913.16 of the Revised Code.
- (E) Perform any additional duties as may be required under this chapter.

4901:1-2-04 Selection and duties of chairperson, secretary, and coordinator.

- (A) Members of the underground technical committee shall annually select a chairperson and secretary from among its members. The selection shall be made at the first meeting of each calendar year. The selection of the chairperson and secretary shall be by the persons receiving the most votes for those two positions.
- (B) Unless removed from office or replaced as a member of the underground technical committee, the term of office for the chairperson and secretary shall be until the first meeting of the underground technical committee held the following calendar year. The chairperson or secretary may be removed from office by a simple majority vote of a quorum at any regularly scheduled or special meeting.

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- (C) The chairperson of the underground technical committee shall preside over the meetings of the committee, schedule meetings of the committee, cause notice of the meetings to be emailed or, if individually requested, mailed to members of the underground technical committee, and perform such other duties as required to enable the members of the underground technical committee to perform their duties.
- (D) The secretary of the underground technical committee shall record the minutes of the meetings. A complete transcript of a meeting, except an executive session, may be substituted for the minutes. If the underground technical committee holds an executive session, the minutes or transcript shall state the matter to be considered in the session. A copy of the minutes or the transcript of each meeting shall be available for public inspection at the offices of the commission.
- (E) If the chairperson has been removed from office or replaced as a member of the underground technical committee or has otherwise relinquished the position or is not present at a meeting, the secretary shall assume the duties of the chairperson until such time as a chairperson is seated. The secretary may appoint another member of the underground technical committee to assume temporarily the duties of the secretary.
- (F) If the underground technical committee is without a chairperson and secretary, the coordinator of the committee shall schedule a meeting of the underground technical committee and cause notice of the meeting to be sent to members of the committee upon receipt of a written request signed by at least two members of the underground technical committee.
- (G) The coordinator shall work with the chairperson and secretary of the underground technical committee to ensure that notice of meetings occur, to gather and distribute to members of the underground technical committee copies of the report of each inquiry conducted pursuant to section 4913.09 of the Revised Code, and such other duties as requested by the chairperson or secretary of the underground technical committee.

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4901:1-2-05 Meetings of the underground technical committee.

- (A) All meetings of the underground technical committee at which official action is taken and deliberation upon official business is conducted shall be opened to the public. For the purpose of this rule, the term "meeting" shall mean any prearranged discussion of the public business of the underground technical committee by a majority of its members. Consistent with division (B) of section 3781.36 of the Revised Code, a majority of committee members constitutes a quorum.
- (B) The underground technical committee may conduct meetings in person, by teleconference, or by video conference.
- (C) The underground technical committee shall meet as necessary to carry out its duties and meet the time-period requirements of division (B) of section 4913.15 of the Revised Code, but not less than once every three months.
- (D) The underground technical committee may hold an executive session for the sole purpose of the consideration of a matter contained in division (G) of section 121.22 of the Revised Code. Such executive session may be held only at a meeting for which notice has been given in accordance with rule 4901:1-2-08 of the Administrative Code, and only after a majority of a quorum of the underground technical committee determines, by a roll call vote, to hold such a session.
- (E) Meetings of the underground technical committee may be recessed for up to three business days.

Comment [CP4]: Generally, what is the intent/purpose of these language? Specifically, "for up to three business days" needs to be further clarified, ie.) three consecutive business days

4901:1-2-06 Voting procedures.

- (A) Each member of the underground technical committee shall have one vote.
- (B) There shall be majority vote of the full underground technical committee, with at least one of the commercial-excavator members voting with the majority, for the underground technical committee to do any of the following:

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- (1) Recommend a fine, penalty, or a combination of fines and penalties under section 4913.15 or section 4913.16 of the Revised Code.
 - (2) Determine, under section 4913.15 or section 4913.16 of the Revised Code, that no enforcement action should be taken.
 - (3) Request a hearing under section 4913.19 of the Revised Code.
- (C) If the committee fails to achieve the required majority for any action described in division (B) of section 4913.15, it shall notify the commission.

4901:1-2-07 Types of meetings.

- (A) A regularly scheduled meeting is one in which members of the underground technical committee are informed of the meeting at least five days prior to the start of the meeting.
- (B) A special meeting is one in which members are informed less than five days but more than twenty-four hours prior to the start of the meeting.
- (C) An emergency meeting is one in which members are informed less than twenty-four hours prior to the start of the meeting.

4901:1-2-08 Notice of meetings to the public.

- | (A) Any person may ~~determine access the schedule of~~ the time, place, and purpose of all regularly scheduled, special, and emergency meetings of the underground technical committee by:
 - (1) Writing to the following address: "Underground Technical Committee Coordinator, Service Monitoring and Enforcement Department, Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215.

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- (2) Contacting the commission via telephone, 800-686-7826, during normal business hours.
- (3) Consulting the commission's web site at www.puco.ohio.gov.
- (B) Any person may request to receive notice of the time, place, and purpose of all regularly scheduled, special, and emergency meetings of the underground technical committee by submitting a written request to: "Underground Technical Committee Coordinator, Service Monitoring and Enforcement Department, Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215." Requests shall include the name, address, telephone number, and email address of the person making the request.
- (C) Notice of regularly scheduled meetings shall be emailed to those persons who have requested to receive notice not less than five days prior to the date of the meeting.
- (D) If a special meeting of the underground technical committee is scheduled, notice of the meeting will be made by email no later than twenty-four hours prior to the special meeting. Such notice shall be complete once an email has been sent. Notice of special meetings shall be given to representatives of the news media who made request to receive notice.
- (E) Members of the news media who wish to be notified of a special meeting or emergency meeting of the underground technical committee should indicate on their request that they are a member of the news media, the news agency that they represent, and a request to be notified when a special meeting or emergency meeting is scheduled. Notice of a special meeting or emergency meeting will only be given to one representative of any particular news agency.
- (F) If an emergency meeting of the underground technical committee is scheduled, notice of the meeting will be made by email or telephone to members of the news media who have requested notification. Calls will be made during the normal business hours of the commission. Such notice shall be complete if an email has been sent or if a telephone message has been left for the representative.

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- (G) The coordinator of the underground technical committee may request that persons verify in writing that they wish to remain on the list of persons to be notified of meetings of the underground technical committee.

4901:1-2-09 Registration requirements.

- (A) Each utility, excavator, developer, and designer who participates in the one-call notification system in the current or previous calendar year shall receive notice from the commission to pay a safety registration fee not to exceed fifty dollars annually, which the commission may lower if the commission determines lowering the registration to be necessary.
- (B) To recognize compliance, the commission may charge a discounted safety registration fee to those registrants that have no fines or penalties assessed against them in the previous calendar year.
- (C) The registration year shall be the calendar year and registration will be accomplished through payment by the due date of the invoice issued by the commission.
- (D) Subject to section 119.14 of the Revised Code, failure to pay the registration fee shall result in a fine of not more than two thousand five hundred dollars.
- (E) The commission shall deposit all safety registrations and fines collected under this section in the underground facilities protection administrative fund created under section 4913.30 of the Revised Code.

Comment [CP5]: ORC 4913.03 (A) states "Each utility, excavator, developer, and designer who participates in the one-call notification system shall register with the public utilities commission and pay a safety registration not to exceed fifty dollars annually..." This language is inconsistent. Clarification warranted on whether (1) the regulated entities must proactively register with the PUCO, as statute indicates, but provides no deadline for registering or (2) whether entities should wait to receive notice from the PUCO as indicated here to pay the registration fee. Also, clarification warranted on whether payment of the fee serves as the registration itself.

Comment [CP6]: Exceeds statutory intent and therefore should be removed.

4901:1-2-10 Service during the investigation of an alleged compliance failure.

During the investigation of an alleged compliance failure:

- (A) Unless provided otherwise by this chapter, service upon the staff may be made by ordinary or certified United States mail, by courier service, by facsimile transmission, or by personal service upon the coordinator.

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Service is effective upon receipt except that service by United States mail is complete upon mailing and service by facsimile transmission is complete upon transmission.

- (B) Service upon the participants shall be made by ordinary or certified United States mail, by courier service, by facsimile transmission, by electronic mail, or by personal service. Service is effective upon receipt by any person, except that service by ordinary or certified United States mail is effective upon mailing and service by facsimile transmission or email is complete upon transmission. Service by email may be made only if the person to be served has consented to receive service by email. Service upon the participants by ordinary or certified United States mail shall be made at any of the following:
 - (1) If the participant is a natural person at the address listed on the inquiry report.
 - (2) If the participant is other than a natural person:
 - (a) If the participant has provided any information to the staff or to the underground technical committee, at the address indicated in this communication.
 - (b) If the participant is a business entity, and whose address is not otherwise disclosed, at any business address of the participant.
- (C) Once a participant has filed a written application for reconsideration with the commission in accordance with section 4913.25 of the Revised Code, any further service shall be made in accordance with chapter 4901-1 of the Administrative Code.

4901:1-2-11 Inquiry procedures.

- (A) An aggrieved person may seek an inquiry with the staff. The request for inquiry must be made no later than ninety days after discovering the alleged compliance

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failure. A request for inquiry shall not, by itself, cause the creation of a formal proceeding at the commission.

- (B) Not later than ten business days after receiving a request for inquiry, the staff shall notify the person responsible for the alleged compliance failure that the request for inquiry was made.
- (C) The person responsible for the alleged compliance failure may respond to the request for inquiry by providing any information that the person considers relevant to the inquiry, including an admission of the compliance failure, not later than thirty days after being notified by the staff.
- (D) The staff shall conduct an inquiry. The staff's investigation shall be limited to whether there was a compliance failure.
- (E) A report of each inquiry will be made by the staff to the underground technical committee. The inquiry report should include any documentary, photographic, or other evidence which has been collected regarding the alleged violation. This report shall not contain a recommendation as to the imposition of a fine or penalty or as to whether any enforcement action should be taken, unless as provided in 4913.16.
- (F) The underground technical committee shall review every report of inquiry submitted to it by the staff and consider making a recommendation imposing a fine, penalty, a combination of fine and penalty, or that no enforcement action be taken pursuant to sections 4913.15, 4913.16, 4913.17, or 4913.19 of the Revised Code.
- (G) The commission, the legal director, the deputy legal director, or an attorney examiner may issue subpoenas, upon the request of the staff or upon the request of the underground technical committee, to support the investigation of an inquiry. A subpoena shall command the person to whom it is directed to attend and give testimony at the time and place specified therein. A subpoena may also command such person to produce the papers, documents, or other tangible things described therein. A subpoena issued under this rule shall be served by personal service or by certified United States mail and is effective upon receipt.

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- (H) The commission, the legal director, the deputy legal director; or an attorney examiner may, upon their own motion or upon motion of the person to whom the subpoena is directed, quash a subpoena if it is unlawful, unreasonable, or oppressive.

4901:1-2-12 Guidelines for consistent application of fines and penalties.

In determining a fine or penalty recommendation or whether no enforcement action should be taken under sections 4913.15, 4913.16, 4913.171, 4913.19, or 4913.25 of the Revised Code, the underground technical committee, the commission, and the staff, as applicable, shall consider the following factors, as they apply:

- (A) The person's demonstrated history of one-call, design, and excavation practices, including the following:
- (1) The number of locate requests received and responded to.
 - (2) The number of locates completed.
 - (3) The number of one calls placed.
 - (4) The number of excavations completed.
 - (5) The number of design or development projects.
- (B) The nature, circumstances, and gravity of the compliance failure, including the amount of damage involved in relation to the compliance failure, and whether it resulted in death, serious injury, dismemberment, or a significant threat to public safety.
- (C) The organizational size of the responsible person.
- (D) The prospective effect of a fine on the person's ability to pay business obligations and otherwise conduct business.

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- (E) The history or number of compliance failures by the person.
- (F) The good faith effort on the person's part in attempting to achieve compliance after the compliance failure was identified.

4901:1-2-13 Notice of a completed report of inquiry.

- (A) Within ten business days of receiving a completed report of inquiry, the staff will serve upon the person that requested the inquiry and the person responsible for the compliance failure a letter notifying the participants of any fine or penalty or of a no-enforcement determination. The letter shall include all of the following, as applicable:
 - (1) The date of the compliance failure.
 - (2) The citation to the statute that was not complied with.
 - (3) A brief description of the compliance failure.
 - (4) The fine or penalty to be imposed, if any.
 - (5) Instructions on how the person may file for reconsideration under section 4913.25 of the Revised Code and how to make a timely filing.
 - (6) A statement that failure to file for reconsideration under section 4913.25 of the Revised Code will make any findings final and enforceable.
- (B) The director of the service monitoring and enforcement department or the director's designee has the authority to impose any fine or penalty set forth in section 4913.151 of the Revised Code.

4901:1-2-14 Default.

- (A) A person responsible for a compliance failure upon whom a letter has been served in accordance with paragraph (A) of rule 4901:1-2-13 of the Administrative Code

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who fails within sixty days to pay the fine or who fails to begin compliance with the penalty within thirty days after the letter shall be in default unless reconsideration in accordance with section 4913.25 of the Revised Code is requested. A person responsible for a compliance failure in default shall be deemed to have admitted the occurrence of the violation and waived all further right to contest liability for the fine or penalty set forth in the letter or to further contest the fine or penalty through a request for reconsideration.

- (B) The attorney general, upon the written request of the commission, shall bring a civil action in the court of common pleas of Franklin County to collect a fine or enforce a penalty assessed under this section.

4901:1-2-15 Requests for reconsideration.

- (A) Not later than thirty days after receiving notice under rule 4901:1-2-13 of the Administrative Code, either the person that requested the inquiry or the person responsible for the compliance failure may file a written application for reconsideration with the commission. The application for reconsideration must state with particularity the grounds for reconsideration.
- (B) Any person opposing an application for reconsideration shall have fifteen days to file a memorandum contra with the commission.
- (C) The staff shall have thirty days after the filing of the application for reconsideration to file a responsive pleading.
- (D) In all other respects, the procedural requirements set forth in chapter 4901-1 of the Administrative Code shall apply to the reconsideration proceeding before the commission. Procedural requirements shall not be limited by 4901-1 or 4901-1-10.
- (E) On reconsideration, the commission shall affirm, reject, or modify the finding of the underground technical committee and shall impose any fine or penalty authorized or take no enforcement action in accordance with section 4913.25 of the Revised Code.

Comment [CP7]: Language is duplicative and should be removed.

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4901:1-2-16 Rehearing.

- (A) Pursuant to section 4913.251 of the Revised Code, a reconsideration order issued under section 4913.25 of the Revised Code is subject to the rehearing and appeal process under chapter 4903 of the Revised Code.

4901:1-2-17 Hearings.

All hearings conducted by the commission under chapter 4913 and the process described in section 4913.251 of the Revised Code shall be conducted in a manner consistent with chapter 4903 of the Revised Code.

4901:1-2-18 Payment of fines.

- (A) Any fine shall be paid by check, certified check, or money order made payable to "Treasurer, State of Ohio," and shall be mailed or delivered to:

"Fiscal Department

Public Utilities Commission of Ohio

180 East Broad Street

Columbus, Ohio 43215-3793"

Any instrument of payment shall contain the identifying case number of the violation for which payment is tendered. Payment is complete upon receipt by the staff.

- (B) If the only remedy requested with respect to a compliance failure is the payment of a fine, and full payment of the fine demanded in the notice is made prior to the execution of any final commission order, full payment shall terminate all further proceedings under this chapter regarding that compliance failure. Full payment under these circumstances constitutes an ~~acknowledgement~~ ~~admission~~ of the occurrence of the violation. The occurrence shall be considered part for purposes of consideration of a person's history of violations in determining the appropriate remedy for any future violation.

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4901:1-2-19 Damage prevention grant program procedures.

Comment [CP8]: Section is overly vague.
Additional details warranted for proper compliance.

- (A) The commission may administer an underground utility damage prevention grant program, subject to availability of funds, to provide grants for qualified purposes.
- (1) Qualified purposes include:
- (a) Public awareness programs established by a protection service.
 - (b) Training and education programs for excavators, operators, designers, persons who locate underground utility facilities, or other persons.
 - (c) Programs providing incentives for excavators, operators, persons who locate underground utility facilities, or other persons to reduce the number and severity of compliance failures.
- (2) Grant funds will be awarded:
- (a) At the discretion of the director of the service monitoring and enforcement department or his/her designee.
 - (b) After a review of all grant applications for the grant review period.
 - (c) As reimbursement for qualified expenses incurred after grant application approval.

4901:1-2-20 Annual report to the general assembly.

In accordance with section 4913.43 of Revised Code, the commission shall submit

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to the general assembly an annual report regarding the activities of the commission and underground technical committee for the previous calendar year. The report shall include, but shall not be limited to:

- (A) Registrations pursuant division (A) of section 4913.03 of the Revised Code.
- (B) Investigations conducted by the commission pursuant to section 4913.09 of the Revised Code.
- (C) Inquiries submitted to the underground technical committee pursuant to section 4913.13 of the Revised Code.
- (D) The underground technical committee's recommendations pursuant to section 4913.15 of the Revised Code for the inquiries submitted to them over the previous calendar year.
- (E) Accounting of funds received through enrollments, penalties, fines, and forfeitures.
- (F) Accounting of funds distributed through the utility damage prevention grant program.
- (G) The membership activities of the underground technical committee for the previous year.
- (H) Any other pertinent information the commission feels the General Assembly will need in the review of this report.

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 15-0282-AU-ORD

Summary: Comments electronically filed by Mrs. Christina H Polesovsky on behalf of API
Ohio