# ENFORCEMENT PROVISIONS IN OHIO'S DAMAGE PREVENTION LAW



- OWhy & How???
- Overview of the Enforcement Process
- OBest Practices
- OResources





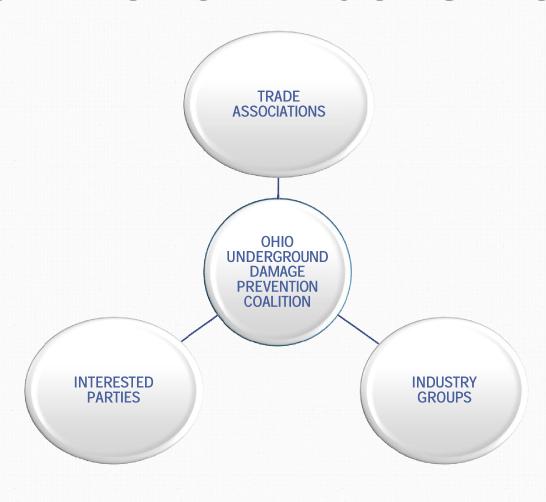
## FACTORS DRIVING THE DISCUSSION

- **OPUBLIC SAFETY**
- **OFAIR PLAYING FIELD**
- **OACCOUNTABILITY**
- O POTENTIAL FEDERAL OVERSIGHT





#### HOME GROWN SOLUTION







#### MAJOR DISCUSSION POINTS

- O ENFORCEMENT AGENT?
- O INDUSTRY REPRESENTATION
- O REPORTING MODEL
  - O MANDATORY
  - O COMPLAINT BASED
- **O PENTALTY STRUCTURE**
- O FUNDING MODEL
  - O SELF FUNDED
  - O ASSESSMENT
- o FINES





OSIGNED INTO LAW BY GOVERNOR KASICH ON DECEMBER 19, 2014

ODIDN'T CHANGE THE LAW...
JUST ADDED ENFORCEMENT





#### SB 378 KEY POINTS

- O APPOINTED PUCO AS THE ENFORCEMENT AGENT
  - O ASSESS PENALTIES & COLLECT FINES
- CREATED UNDERGROUND TECHNICAL COMMITTEE (UTC)
  - 17 MEMBER COMMITTEE OF INDUSTRY EXPERTS APPOINTED BY LEGISLATURE
  - O REVIEW COMPLAINTS AND RECOMMEND FINE/PENALTY/NO ACTION





#### SB 378 KEY POINTS...

- O COMPLAINT DRIVEN SYSTEM
- O FUNDED BY ASSESSMENTS TO USERS OF THE SYSTEM... NOT TO EXCEED \$50 ANNUALLY
- FINES- DEPOSITED INTO EDUCATIONAL GRANT FUND
- O NOT ABOUT DAMAGES... BUT NON-COMPLIANCE

## SB 378... Details, Details Details!!!

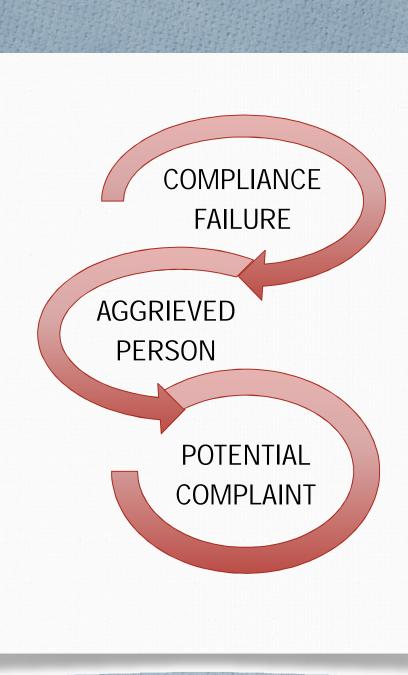






#### WHAT'S ENFORCED?

- O OHIO REVISED CODE SECTIONS:
  - 0 153.64- PUBLIC IMPROVEMENT PROJECTS
  - 0 3781.26(A)- UTILITY MUST REGISTER W/ ONE-CALL
  - **0** 3781.27- DESIGN TICKETS
  - 0 3781.28- EXCAVATOR NOTIFYING THE ONE-CALL
  - 0 3781.29- UTILITIES MARKING
  - 0 3781.30- DUTIES OF AN EXCAVATOR
  - 0 3781.32-33- CONNECTIONS/TIE-INS & JURISDICTION







#### COMPLIANCE FAILURE

O (B) "Compliance failure" means a failure to comply with any provision of 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.





#### AGGRIEVED PERSON

- "AGGRIEVED PERSON" MAY FILE A COMPLAINT WITH PUCO W/IN 90 DAYS OF DISCOVERY OF COMPLIANCE FAILURE
- O 4913.01(A) "Aggrieved person" means a person 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 and who is directly involved with or impacted by the alleged compliance failure, as identified in the request for inquiry, of another person 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.





#### THE PROCESS...

- "AGGRIEVED PERSON" MAY FILE A COMPLAINT WITH PUCO W/IN 90 DAYS OF DISCOVERY OF COMPLIANCE FAILURE
- PUCO NOTIFIES PERSON RESPONSIBLE W/IN 10 DAYS OF RECEIVING COMPLAINT
  - PERSON RESPONSIBLE HAS 30 DAYS TO RESPOND WITH INFORMATION RELEVANT TO COMPLAINT
- PUCO CONDUCTS INVESTIGATION TO DETERMINE IF THERE WAS A COMPLIANCE FAILURE & SUBMITS REPORT TO UTC
- O UTC REVIEWS REPORT





#### **UTC MAY:**

- O DETERMINE NO ENFORCEMENT ACTION BE TAKEN
- RECOMMEND NON-MONETARY PENALTY AND/OR FINE
  - TRAINING/EDUCATION/PERFORMANCE IMPOVEMENT PLAN
  - O FINE UP TO \$2,500 FOR 1<sup>ST</sup> OFFENSE
  - O FINE UP TO \$5,000 FOR SUBSEQUENT OFFENSE
- RECOMMEND FINE AND REPORT TO PUCO THE PERSON IS PERSISTANT NON-COMPLIER
  - PUCO MAY IMPOSE UP TO \$10,000 FINE IN ADDITION TO UTC RECOMMENDATION





### UTC CONSIDERATIONS WHEN ASSESSING PENALTIES

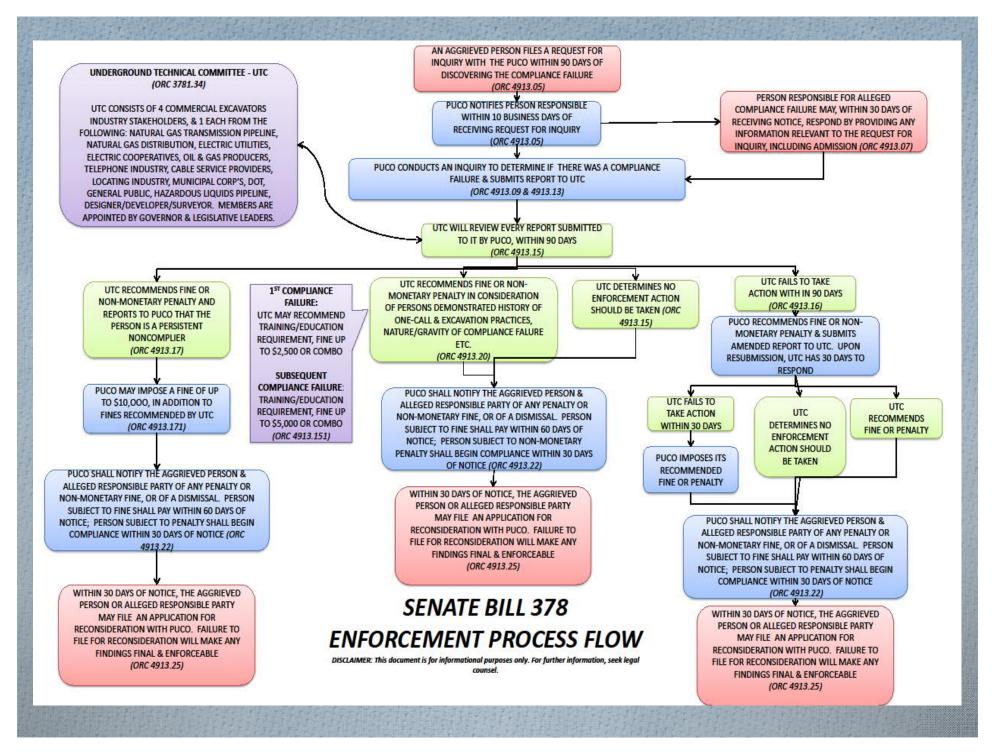
- PERSON'S DEMONSTRATED HISTORY OF ONE-CALL, DESIGN AND EXCAVATION PRACTICES
- NATURE, CIRCUMSTANCE AND GRAVITY OF COMPLIANCE FAILURE
- O HISTORY OR NUMBER OF COMPLIANCE FAILURES
- GOOD FAITH EFFORT IN ATTEMPTING TO ACHIEVE COMPLIANCE AFTER FAILURE WAS IDENTIFIED





#### **DUE PROCESS...**

- O FINES OR PENALTIES MAY BE APPEALED TO PUCO...
  OPENING AN OFFICIAL DOCKET
- FAILURE TO APPEAL WITH IN 30 DAYS OF NOTICE OF FINE OR PENALTY WILL MAKE ANY FINDINGS FINAL AND ENFORCABLE
  - O COMPLIANCE WITH TRAINING/EDUCATION PENALTY SHALL BEGIN WITH IN 30 DAY OF NOTICE
  - O FINE(S) SHALL BE PAID NOT LATER THAN 60 DAYS AFTER FINE IS IMPOSED







## SO WHAT HAPPENS TO THE MONEY COLLECTED THROUGH FINES?

- MONIES COLLECTED THROUGH FINES ARE PLACED INTO GRANT PROGRAM THAT IS ADMINISTERED BY THE PUCO
- O GRANT MONEY MAY BE USED FOR:
  - O PUBLIC AWARENESS PROGRAMS
  - TRAINING & EDUCATION PROGRAMS FOR EXCAVATORS, OPERATORS, DESIGNERS, LOCATORS...
  - INCENTIVE PROGRAMS TO REDUCE NUMBER & SEVERITY OF COMPLIANCE FAILURES

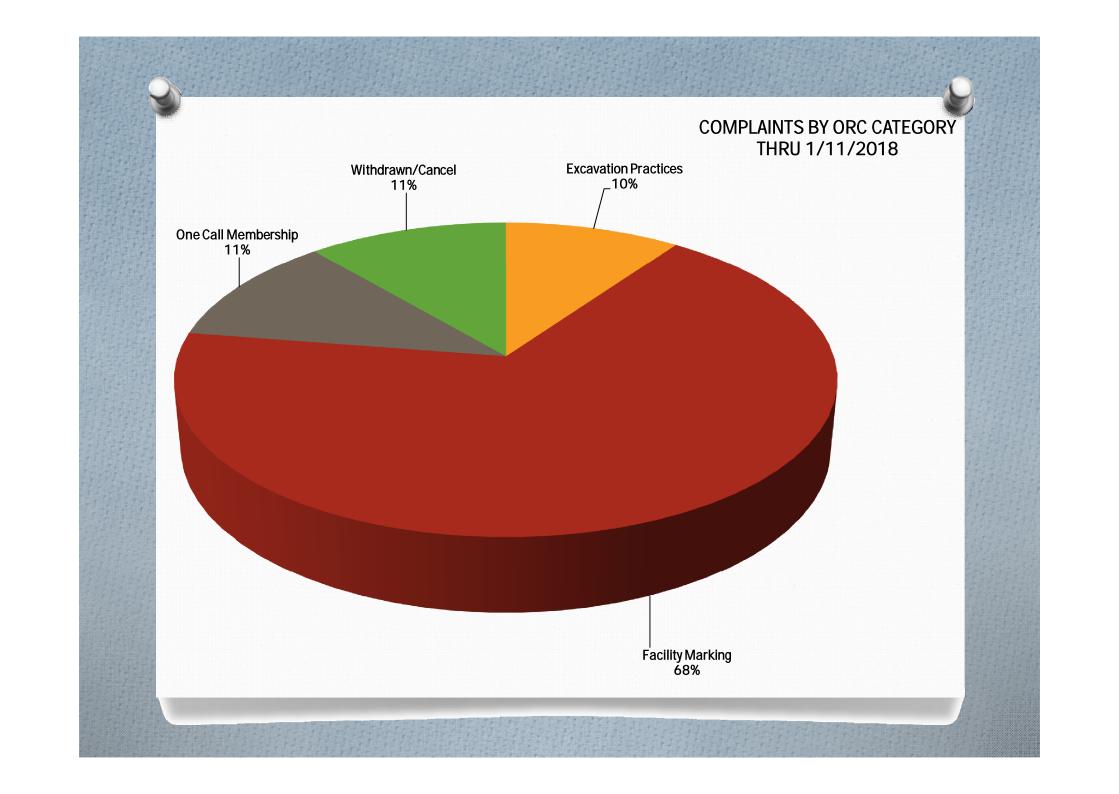


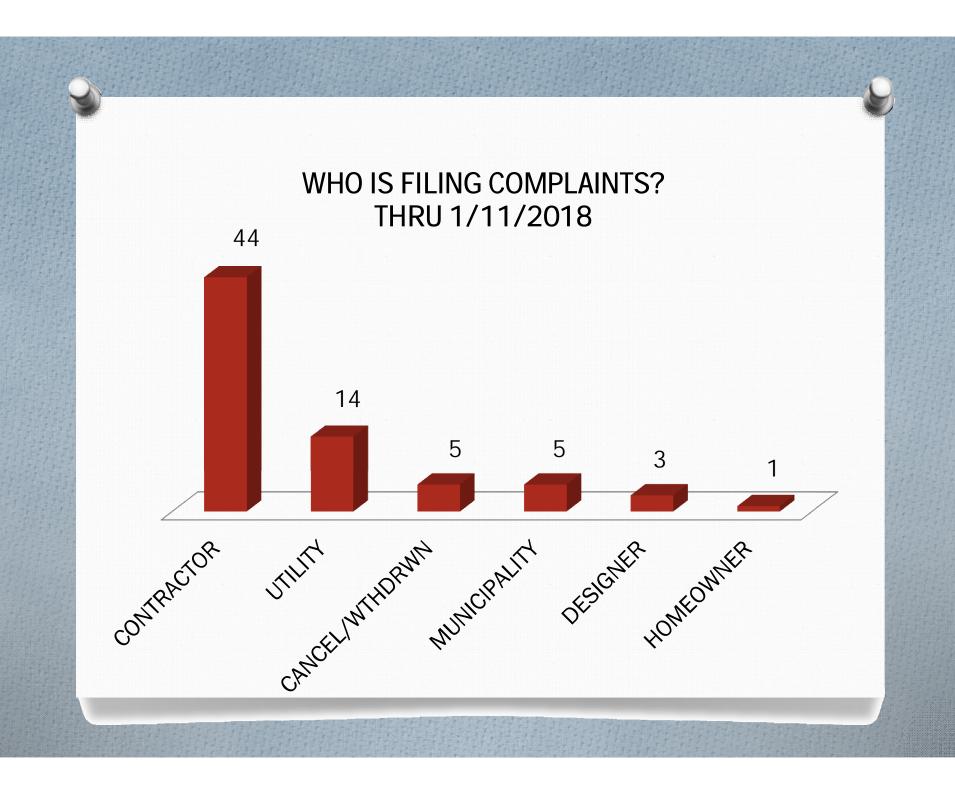


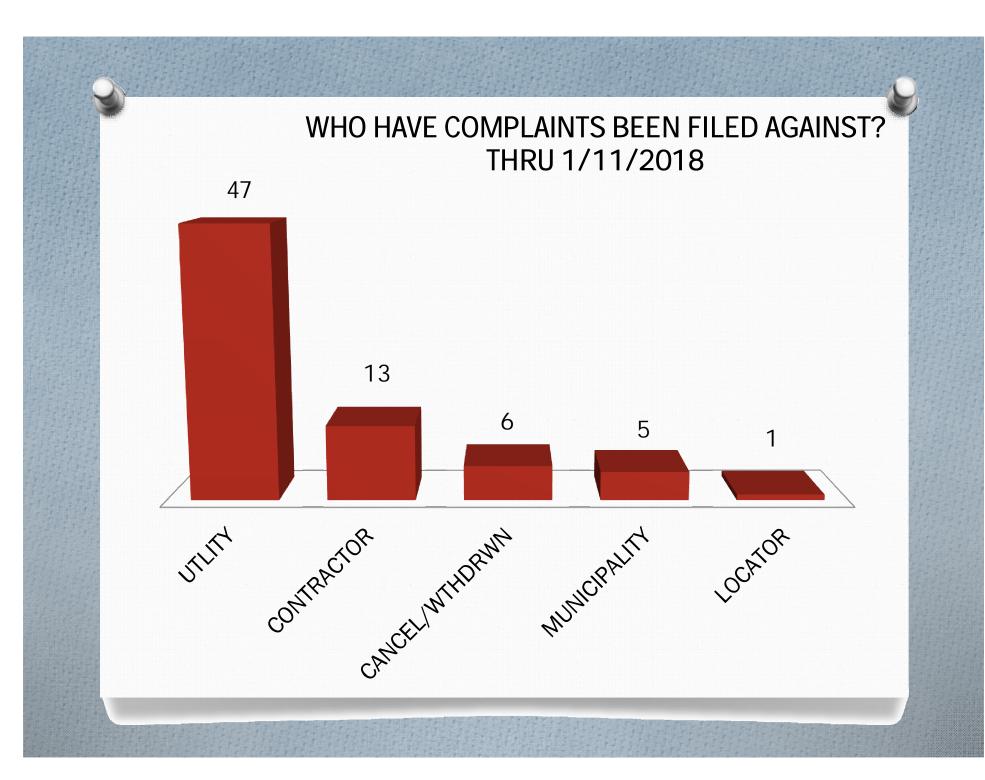
#### BEST PRACTICES

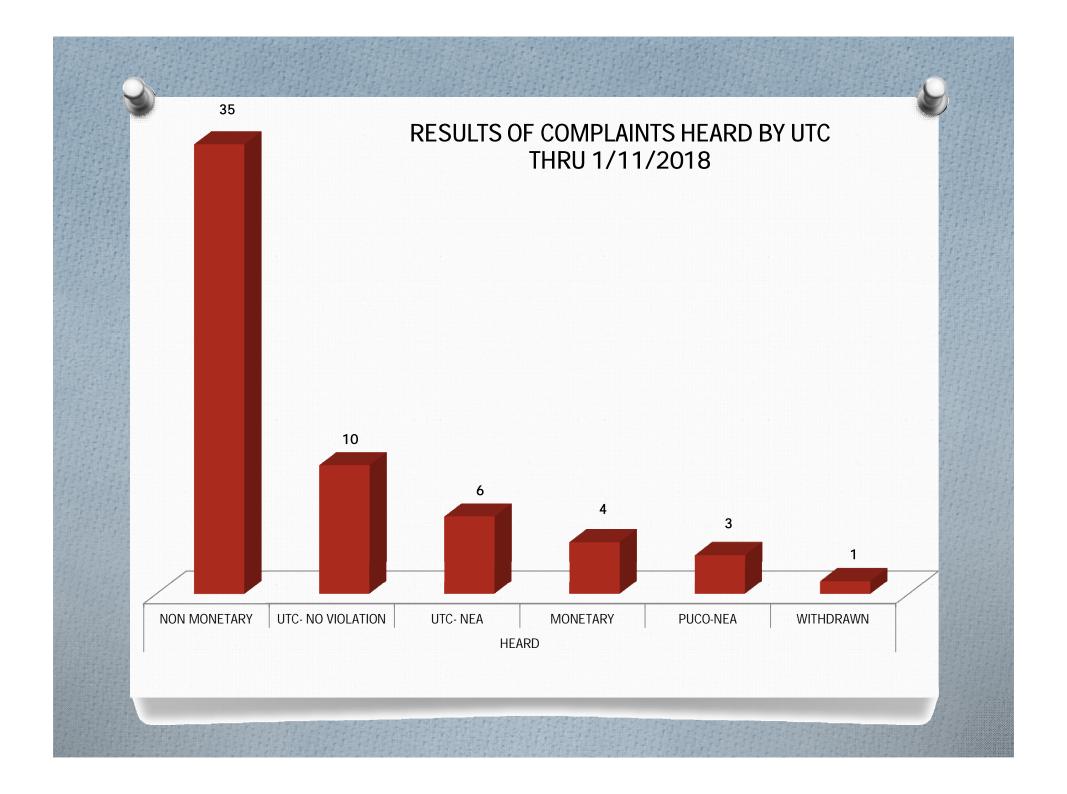
- O PLAN & COMMUNICATE
- O DEVELOP A REPEATABLE INVESTIGATION PROCESS
  - O YOUR STORY WILL NEED TO BE TOLD IN PHOTOS, DOCUMENTATION, NARRATIVES AND TIMELINES
- BE ABLE TO DEMONSTRATE YOUR HISTORY WITH ONE-CALL PROCESS
- O BE ABLE TO DEMONSTRATE THE ACTIONS YOU TOOK TO ADDRESS OR RESOLVE THE ISSUE

#### ENFORCEMENT ACTIVITY













#### RESOURCES

- O CENTRAL OHIO DAMAGE PREVENTION COUNCIL
  - O 3RD WEDNESDAY OF EACH MONTH at 9:00AM
  - O OHIO CONTRACTORS ASSOCIATION
  - 0 1313 DUBLIN RD, COLUMBUS OH
- 0 www.OHI0811.org
- 0 <a href="https://www.puco.ohio.gov/industry-information/industry-topics/damage-prevention">https://www.puco.ohio.gov/industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industry-industr