



TIM GRIFFIN
ATTORNEY GENERAL

October 17, 2023

The Honorable Terry Rice
The Honorable Jeff Wardlaw
Arkansas Legislative Council
1 Capitol Mall
Little Rock, AR 72201

RE: Quarterly Report – Arkansas Underground Facilities Damage Prevention Act

Dear Co-Chairs Rice and Wardlaw:

In accordance with Arkansas Code Annotated § 14-271-104(g), I submit this quarterly report for review by the Arkansas Legislative Council. This report covers the time period from July 1, 2023, through September 30, 2023.

Act 309 of 2023, which amended the Arkansas Underground Facilities Damages Prevention Act (the “AUFDP”), was enacted with an emergency clause on March 24, 2023. That legislation requires, *inter alia*, that my office report (1) the number of complaints submitted under the AUFDP; (2) the number of the submitted complaints that were settled or prosecuted; and (3) the amount of fines collected during the previous quarter.

Prior to the effective date of Act 309, the problem of damage to underground facilities was largely unaddressed. On July 20, 2023, working with the Public Service Commission and the Contractors Licensing Board, my office issued an enforcement advisory to notify operators of underground facilities and excavators of their responsibilities under the AUFDP and that my office would civilly enforce any violations. The enforcement advisory also encouraged the filing of complaints with my office.

Also, on July 20, 2023, I issued a press release to raise public awareness of the problem of damage to underground facilities.¹ These efforts succeeded in raising public awareness. From July 1, 2023 to September 30, 2023, my office received one hundred three (103) complaints against excavators² compared to only forty-nine (49) in the prior quarter. Many of these complaints are

¹ See https://arkansasag.gov/news_releases/attorney-general-griffin-issues-enforcement-advisory-related-to-arkansas-underground-facilities-damage-prevention-act/.

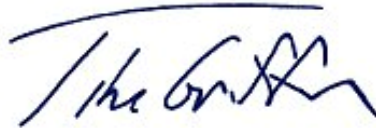
² I would note that Cooperative Tech Solutions submitted seventy-four (74) individual “complaints” to our office all against ARKUPS/AT&T. However, these “complaints” did not provide any information on any of the 74 complaint forms. They simply stated, “information can be provided upon request”. These “complaints” were not reporting damage, but rather reporting that they were losing productivity due to ARKUPS/AT&T not marking sites. Because these “complaints” did not have sufficient factual

not actionable because of a myriad of issues including, but not limited to, incomplete factual information, duplication, or allegations of certain actions that are not covered or contemplated by Act 309. Nevertheless, in an attempt to most efficiently resolve these complaints and to discourage further damage to underground facilities, each of these excavators receive a letter from me notifying them of the allegations and requesting that they voluntarily undergo training in underground facilities damage prevention offered by the One Call Center.³ If an excavator refuses to attend the training program, my office may then proceed with an enforcement action against them in court. This approach allows me to focus on the truly bad actors while allowing excavators who make mistakes to obtain training without unnecessarily clogging the court system and diverting resources from my office that could be better used in other areas of consumer protection.

While my office is assessing and pursuing complaints as they are lodged with my office, we cannot address them instantly with a lawsuit, nor would that approach be the most efficient allocation of resources—both in my office and in the court system. As I stated in my previous quarterly report, my office has filed one lawsuit⁴ and is still actively seeking a resolution to the matter. We have engaged in discovery, and a pretrial status hearing has been set for January 22, 2024. We have not settled any complaints or collected any fines.

If you have questions or concerns, please do not hesitate to contact me at (501) 837-5190. With best regards, I am

Very truly yours,

A handwritten signature in blue ink, appearing to read "Tim Griffin", with a horizontal line above it.

Tim Griffin

TG/acb

CC: Scott Bowman, Chief Executive Officer, Arkansas One Call Center (811)
Michael Marchand, Executive Director, Arkansas Public Service Commission

information and were not actionable pursuant to Act 309, we did not count all these complaints in the 103 total above.

³ See attached Warning Letter template. See also Ark. Code Ann. § 14-271-104(a)(1) (“A person who violates this chapter may be required to undergo training in underground facilities damage prevention according to a training program developed and administered by the One Call Center.”)

⁴ *State of Arkansas v. Ground Zero Construction, Inc.*, Case No. 04CV-23-1125, filed in the Circuit Court of Benton County, Arkansas on April 27, 2023.



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[REDACTED]

WARNING LETTER

VIA REGULAR MAIL

[REDACTED]

Re: Violation of the Arkansas Underground Facilities Damage Prevention Act

Dear [REDACTED]:

The Attorney General has received a complaint against you for a violation of the Arkansas Underground Facilities Damage Prevention Act (AUFDP). Pursuant to Ark. Code Ann. § 14-271-104(b), the Arkansas Attorney General is authorized to enforce the provisions of the AUFDP. Any person who violates the AUFDP must undergo training in underground facilities damage prevention according to a training program developed and administered by the One Call Center. Ark. Code Ann. § 14-271-104(a)(2).

The Attorney General requests that you voluntarily undergo training in underground facilities damage prevention. You may contact the One Call Center at (501) 328-2545 to schedule the training. If you refuse to attend the training program offered by the One Call Center, the Attorney General may proceed with an enforcement action against you in court.

Please notify this Office of the steps you have taken to attend the training administered by the One Call Center within fourteen (14) days of your receipt of this letter. Your response should be in writing and addressed to the Office of the Arkansas Attorney General c/o Matthew M. Ford,

323 CENTER STREET, SUITE 200
LITTLE ROCK, ARKANSAS 72201

323 Center Street, Suite 200, Little Rock, AR 72201 or provided by email. Please contact me if you have any questions.

Sincerely,

Tim Griffin
Attorney General

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LITTLE ROCK, ARKANSAS 72201