



MARICOPA COUNTY
Department of Transportation

MEMORANDUM

Date: March 3, 2010

To: MAG Specifications and Details Committee

From: Robert Herz, MCDOT Representative

Subject: Obsolete quotations of Arizona Revised Statutes in Section **Case 10-04**
109.8 PAYMENT FOR DELAY

PURPOSE: Remove quotations of Arizona Revised Statutes from text located in Section 109.8 PAYMENT FOR DELAY.

REVISION: Revise wording in section 109.8 as indicated below:

109.8 PAYMENT FOR DELAY:

The procedures contained in this Section shall not be construed to void any provision of the contract which require notice of delays, provides for negotiation of other procedures for settlement or provide for liquidated damages.

109.8.1 Failure to Locate or Incorrect Location of Utilities: Arizona Revised Statutes 40-360.28 states ~~“indicates~~ that if ~~a person~~~~the~~ (owner, ~~or~~ operator, ~~or agent~~) fails to locate or incorrectly marks the location of~~locates~~ the underground facility in a timely manner, pursuant to this article, the person (owner, ~~or~~ operator, ~~or agent~~) becomes liable for resulting damages, costs and expense to the injured party.” The Contracting Agency will deny any claims for damages or delays if another owner or operator is at fault.

109.8.2 Contracting Agency Delays: Arizona Revised Statutes 34-221 states “A contract for the procurement of construction shall include a provision which provides for negotiations between the Agent and the Contractor for the recovery of damages related to expenses incurred by the Contractor for a delay for which the Agent is responsible, which is unreasonable under the circumstances and which was not within the contemplation of the parties to the contract.” In this case, if the Contractor sustains damages which could not have been avoided by the judicious handling of forces, equipment and plant or by reasonable revision in the Contractor's schedule of operation, the compensation for such damages will be negotiated. The Contractor shall notify the Engineer of the condition in writing by the next work day. Failure to notify the Engineer within this time may be just cause to reject any claims for such damages.

Arizona Revised Statute:

40-360.28. [Civil penalty; liability](#)

A. Except as provided in section 40-360.22, subsection M, a person who violates any provision of this article is subject to a civil penalty in an amount not to exceed five thousand dollars to be imposed by the court in favor of the state. Any penalties received by the state shall be deposited in the state general fund.

B. If a violation of this article results in damage to an underground facility, the violator is liable to all affected underground facilities operators and excavators for all resulting damages proximately caused by the violations, including economic loss.

C. If a person violates this article by failing to provide timely notice as required by this article, by failing to respond in the time and manner provided by this article or by failing to locate and mark an underground facility in the manner provided by this article, the person is liable to all affected underground facilities operators and excavators for all damages proximately caused by the violation, including economic loss.

D. Notwithstanding any other law, a violation of section 40-360.22, subsection D or subsection I, paragraph 3 is a superseding event that breaks the chain of causation for any damages that could result from an underground facilities operator's failure to accurately locate or mark an underground facility.

E. If a landlord or an excavator complies with the duties set forth in sections 40-360.22, 40-360.30 and 40-360.32 for all facilities operated by a landlord as provided in section 40-360.22, subsection P, paragraph 1, the person is not liable for any death or injury to persons or property or for any economic loss to any person to the extent the conduct is regulated by this article. This section does not excuse any landlord or excavator from liability for any death or injury to persons or property or for any economic loss to any person to the extent the injury or loss does not arise from the conduct regulated by this article.

F. This section is not applicable to an excavation made:

1. During an emergency which involves danger to life, health or property if reasonable precautions are taken to protect underground facilities.
2. In agricultural operations or for the purpose of finding or extracting natural resources.
3. With hand tools on property owned or occupied by the person performing the excavation while gardening or tilling such property.

§ 40-360.28. Civil penalty; liability

A. Except as provided in § 40-360.22, subsection M, a person who violates any provision of this article is subject to a civil penalty in an amount not to exceed five thousand dollars to be imposed by the court in favor of the state. Any penalties received by the state shall be deposited in the state general fund.

B. If a violation of this article results in damage to an underground facility, the violator is liable to all affected underground facilities operators and excavators for all resulting damages proximately caused by the violations, including economic loss.

C. If a person violates this article by failing to provide timely notice as required by this article, by failing to respond in the time and manner provided by this article or by failing to locate and mark an underground facility in the manner provided by this article, the person is liable to all affected underground facilities operators and excavators for all damages proximately caused by the violation, including economic loss.

D. Notwithstanding any other law, a violation of § 40-360.22, subsection D or subsection L, paragraph 3 is a superseding event that breaks the chain of causation for any damages that could result from an underground facilities operator's failure to accurately locate or mark an underground facility.

E. If a landlord or an excavator complies with the duties set forth in §§ 40-360.22, 40-360.30 and 40-360.32 for all facilities operated by a landlord as provided in § 40-360.22, subsection P, paragraph 1, the person is not liable for any death or injury to persons or property or for any economic loss to any person to the extent the conduct is regulated by this article. This section does not excuse any landlord or excavator from liability for any death or injury to persons or property or for any economic loss to any person to the extent the injury or loss does not arise from the conduct regulated by this article.

F. This section is not applicable to an excavation made:

1. During an emergency which involves danger to life, health or property if reasonable precautions are taken to protect underground facilities.

2. In agricultural operations or for the purpose of finding or extracting natural resources.

3. With hand tools on property owned or occupied by the person performing the excavation while gardening or tilling such property.

Added by Laws 1981, Ch. 153, § 6. Amended by Laws 1985, Ch. 106, § 2; Laws 1999, Ch. 169, § 1; Laws 2005, Ch. 222, § 6; Laws 2006, Ch. 258, § 11, eff. Jan. 1, 2007.

Historical and Statutory Notes

The 2005 amendment by Ch. 222 rewrote the section, which had read:

"A. A person who violates any provision of this article is subject to a civil penalty in an amount not to exceed five thousand dollars to be imposed by the court in favor of the state. Any penalties received by the state shall be deposited in the general fund.

"B. If a violation of this article results in physical contact with an underground facility, the violator is liable to the owner of the facility for all damages to the facilities and costs, expenses and damages to third parties incurred by the owner of the facility as a result of the contact.

"C. If the owner or operator fails to locate or incorrectly locates the underground facility, pursuant to this article, the owner or operator becomes liable for resulting damages, costs and expenses to the injured party.

"D. This section is not applicable to an excavation made:

"1. During an emergency which involves danger to life, health or property if reasonable precautions are taken to protect underground facilities.

"2. In agricultural operations or for the purpose of finding or extracting natural resources.

"3. With hand tools on property owned or occupied by the person performing the excavation while gardening or tilling such property."

The 2006 amendment by Ch. 258 rewrote the section, which had read:

"A. Except as provided in § 40-360.22, subsection J, a person who violates any provision of this article is subject to a civil penalty in an amount not to exceed five thousand dollars to be imposed by the court in favor of the state. Any penalties received by the state shall be deposited in the state general fund.

"B. If a violation of this article results in damage to an underground facility, the violator is liable to the owner of the facility for all damages to the facilities and all costs and expenses, including dam-