



Summary of Procedures and Respondent's Rights

Please note that the following is offered for informational purposes and does not constitute legal advice. Anyone involved in this process is entitled to individual legal representation and is encouraged to retain their own counsel in order to be fully apprised of their rights.

What is the purpose of Indiana's Damage to Underground Facilities Act, IC 8-1-26?

The purpose of this Act is to promote excavation and pipeline safety and to reduce imminent danger to life, health, property, or loss of service associated with unsafe digging practices.

Who reports possible violations?

Any person or entity may report a violation of the Indiana Damage to Underground Facilities Act ("Act") to the Indiana Utility Regulatory Commission ("Commission") Pipeline Safety Division ("Division"), but most reports of violations are communicated regularly to the Pipeline Division from the Indiana Plant Underground Protection Service, commonly referred to as Indiana 811 Association Office. Pursuant to 170 IAC 5-5-2(b), violations shall be reported to the Pipeline Division within thirty (30) days of their occurrence.

What is the process for investigating alleged violations?

The Division shall commence an investigation of each report by contacting the excavator and gas operator involved by sending a written request for information within sixty (60) days, per 170 IAC 5-5-3(a). The initial letter you received requesting information commenced the investigation in your case. If there was a contact person from your company listed on the letter, that is the name the Division was provided with from Indiana 811 (i.e. the person who called in the locate ticket or reported the line hit).

You have thirty (30) days to respond to the investigation with information that demonstrates that you called in a proper locate ticket and hand excavated within two (2) feet of the gas pipeline. You also have the opportunity to provide the names of anyone else who may have information in your case. A similar letter was provided to the gas operator. The Division will review the excavator and operator responses and from there provide their findings to the Underground Plant Protection Advisory Committee ("Advisory Committee") regarding whether you or the gas operator violated a provision of Indiana's Damage to Underground Facilities Act, IC 8-1-26. If the Division does not find a violation was committed, you will receive a letter stating that the case will be closed and the Division will not forward findings to the Advisory Committee.

The Advisory Committee meets monthly to review the Division's findings. If your case will go before the Advisory Committee, you will receive a letter noting the date, time, and location of the meeting and a copy of the Division's Investigation Report for your case. You will have an additional opportunity to provide documentation disputing the Division's findings.

If the Advisory Committee agrees with the Division's findings, they will assess a civil penalty. You will be notified of the penalty assessed and provided the opportunity to accept the penalty or request a public hearing to dispute it. If you accept the penalty or fail to properly request a public hearing, the Commission will consider the penalty and approve or disapprove the findings.

Who is on the Advisory Committee?

Pursuant to IC 8-1-26-23(b), the Advisory Committee was created by the Act and includes seven (7) members, representing a cross section of participants, appointed by the Governor from the following entities: two (2) representing commercial excavators; one (1) representing the 811 Association; one (1) representing investor owned gas utilities; one (1) representing operators of pipeline facilities or pipelines; one (1) representing municipal gas utilities; one (1) representing providers of facility locate marking service companies.

Do I have to attend the Advisory Committee meeting? What happens there?

No, you do not have to attend. The Advisory Committee's deliberations will be conducted in public and you are entitled to attend because it is a public meeting. However, at this stage of the proceedings there is not yet an opportunity for a hearing. There will be no opportunities to present witnesses, cross examine witnesses, or to present verbal evidence. If you have additional documentation, you may bring it to the meeting; we request you bring eight (8) copies for the Committee members and their attorney.

In lieu of bringing documents to the Advisory Committee meeting, you may send correspondence to the Advisory Committee regarding the Pipeline Division's findings so long as it is received seven (7) days in advance of the meeting. This deadline is necessary in order to allow administrative staff adequate time to photocopy, organize and distribute the additional documents to the Advisory Committee members.

At the meeting, the Advisory Committee meeting will accept or dismiss the Division's findings of violation. If they accept a finding, they will assess a civil penalty to recommend to the Commission.

What penalties are possible?

Pursuant to the Act, civil penalties may include any or all of the following:

1. A warning letter.
2. Required participation of employees in a mandatory education and training program sponsored by the IURC.
3. Required development of a plan to avoid future violations, which must be approved by the IURC.
4. A civil penalty up to a maximum of ten thousand dollars (\$10,000).

For first time violators in an instance where no one was personally injured, generally the initial civil penalty is a warning letter. Multiple violations, evidence of recklessness, personal injury, and property damage over ten thousand dollars (\$10,000) may be grounds for the Advisory Committee to institute monetary penalties.

What if I disagree with the assessed penalties?

Once you have been notified of the assessed penalties, you have thirty (30) days to request a public hearing to dispute the Advisory Committee's penalty recommendation. Please note that requests for public hearing must be drafted according to the Commission's rules for practice and procedure, found at 170 IAC 1-1.1: http://www.in.gov/legislative/iac/iac_title?iact=170. Individuals may represent themselves, but companies must be represented by legal counsel. You are strongly encouraged to seek legal counsel if you plan to request a public hearing before the Commission.

Does the Division determine criminal violations?

No, the Pipeline Safety Division's investigation under IC 8-1-26 does not entail determining criminal liability or a civil determination of fault or damages. It determines whether any statutory violations were committed regarding public safety.

I still have questions.

For technical questions, you can contact the Division Director, Bill Boyd, at (317) 232-2718. Legal inquiries should be directed to DeAnna L. Poon, Advisor to the Advisory Committee and Assistant General Counsel at the IURC, at (317) 232-6735.