

# 2013 Pipeline Safety Seminar



May 14–16, 2013  
French Lick, IN

# **Pipeline Safety Division's Role: IC 8-1-26**

**The Pipeline Safety Division shall investigate alleged violations of IC 8-1-26. If the Division finds that a person has violated the chapter, they shall forward its finding to the Advisory Committee. IC 8-1-26-23(g).**

# **What Is the Indiana Underground Plant Protection Advisory Committee?**

**The Advisory Committee shall act in an advisory capacity to the IURC concerning the implementation and enforcement of IC 8-1-26. In this capacity, the Advisory Committee may recommend civil penalties. IC 8-1-26-23(h).**

# Who Are Members of the Advisory Committee?

- ▶ **One member representing the association (Dan Meiners, Vice Chairman, Indiana 811)**
- ▶ **One member representing investor owned gas utilities (Rick Slagle, Chairman, Vectren)**
- ▶ **One member representing operators of pipeline facilities or pipelines (Mark Ritter, Marathon Pipeline)**
- ▶ **One member representing municipal gas utilities (Ben Warren, Secretary, Citizens Gas)**
- ▶ **Two members representing commercial excavators (VACANT)**
- ▶ **One member representing providers of facility locate marking services (Blaine Walters, SM&P)**

# **When Does the Advisory Committee Meet?**

**Generally, the Advisory Committee meets every fourth Tuesday of the month at the Indiana 811 office:**

**1433 Holey Moley Way, Greenwood, Indiana**



# History of the Advisory Committee

- ▶ **July 1, 2009** IC 8-1-26 is enacted.
- ▶ **July 2010** Members are appointed to the Advisory Committee
- ▶ **June 24, 2011** The Committee's administrative rule, 170 IAC 5-5, takes effect.
- ▶ **December 2011** DeAnna Poon is assigned as legal counsel to Committee.
- ▶ **Since 2011**
  - IURC cleared backlog of cases.
  - Committee instituted penalty schedule and decision log for consistent review of cases.
  - IURC posts forms and cases online.
  - IURC inbox sends automated response to confirm receipt of case information.

# Future of the Advisory Committee

- ▶ **Continue to build decision log and learn from previous cases.**
  - ▶ **Upgrade from Microsoft Access database to SharePoint system for easier and more streamlined review of cases.**
  - ▶ **Update administrative rule to reflect current and considered processes.**
  - ▶ **Yearly review of penalty schedule.**
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# Anatomy of a Case

- ▶ **Report from Indiana 811 or Operator**
  - ▶ **“Initial letters” to the excavator and operator**
  - ▶ **Wait 30+ days for responses**
  - ▶ **Case is closed out**
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# Anatomy of a Case (cont.)

- ▶ **Failed delivery (IURC is unable to contact excavator) -- case closed**
  - ▶ **No violation -- case closed**
  - ▶ **Violation**
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# Anatomy of a Case (cont.)

- ▶ Excavator gets a second opportunity to provide documentation (about 2 weeks notice)
- ▶ Case goes before Advisory Committee
- ▶ If recommendation, case is sent to the Violator who can do the following:
  - Consent to the violation and penalty
  - Request a public hearing to contest it
  - Do nothing
- ▶ If a public hearing is requested, it occurs.
- ▶ If no public hearing is properly requested within 30 days, the case goes before the IURC for final approval.
- ▶ A final letter goes out from the IURC that includes a copy of the Order, any civil penalties levied, and instructions on how to fulfill the penalty obligations.

# Types of Violations

- ▶ Failure to provide notice. An excavator must call Indiana 811 2 full working days before commencing work. Tickets expire after 20 days. Therefore, renew your tickets on the 18<sup>th</sup> business day if you do not want a break in work. It does not matter if you are already working on the site -- you STILL have to renew tickets.
- ▶ Failure to white line. Required when an excavator cannot provide a physical location through street address, a legal description of the location, or a highway location using highway mile markers or cross streets.
- ▶ Damage to facility markings. A person cannot knowingly move, remove, damage, or otherwise alter a facility locate marking prior to excavation. You can move them as part of the excavation.
- ▶ Providing false notice of an emergency.

# Types of Violations (cont.)

- ▶ Failing to notify about illegible marks. It is the duty of the operator to mark lines, but excavators also have a duty to notify Indiana 811 if there is evidence of an unmarked pipeline facility in the area or if the markings have become illegible.
- ▶ Failing to maintain 2 feet of clearance. Excavators must hand excavate, air cut or vacuum excavate to expose the area on 2 feet of either side of the marks.
- ▶ Failing to plan to avoid damage or minimize interference. Excavators must plan the excavation or demolition to avoid damage to or minimize interference with underground facilities in and near the construction area. Examples are shoring up walls and supporting exposed pipes.
- ▶ Failing to locate or inaccurately locating. Operators must mark facilities within 2 business days of the notice. The marks must be within 2 feet of the line. Lines do not have to mark depth.

# Violation Exceptions

- ▶ **Homeowner exception.** Hand tool, less than 12 inches, on property owned or controlled by the person performing the excavation
- ▶ **Emergencies.** Imminent danger to life, health, property, or loss of service; still have to give oral notice as soon as practicable and request emergency assistance from the Operator

# Possible Penalties

## Excavators:

- ▶ **Warning letter**
- ▶ **Training**
- ▶ **Action plan**
- ▶ **Monetary penalties up to \$10,000**

## Operators:

- ▶ **Warning letter**
- ▶ **Training**
- ▶ **Action plan**
- ▶ **Monetary penalties up to \$1,000**
- ▶ **Additional fines under IC 8-1-22.5-7 up to \$25,000**

# Penalty Schedule, Generally

- ▶ **Goal is education, not monetary penalties.**
  - ▶ **Penalty schedule was reevaluated December 2012 and will be reevaluated again next year.**
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Violation	Penalty
For all violations occurring prior to January 1, 2012	Warning letter
Initial violations, date of damage is January 1, 2012 or later	Warning letter
Second or more violation, date of damage January 1, 2012 - June 30, 2012	Training once within period
Second or more violation, date of damage July 1, 2012 -December 31, 2012	Training once within period
Second or more violation, damage January 1, 2013 - June 30, 2013	Training once within period
Second or more violation, damage July 1, 2013 - December 31, 2013	Training once within period
Third or more violation, damage January 1, 2013 - June 30, 2013	Second training once; if already occurred, Corrective action plan once
Fourth or more violation, damage July 1, 2013 - December 31, 2013	Second training once; if already occurred, Corrective action plan; if already effective, \$500, escalating by \$500 for each occurrence
<i>For ANY violations occurring where there is evidence of recklessness, regardless of date of occurrence</i>	Minimum \$500 penalty

# Penalty Schedule, Other Factors

## Factors to consider that might warrant lesser penalties:

- ▶ Level of culpability
- ▶ Shows good faith effort to comply after notice of violation
- ▶ Primary business does not normally involve excavation
- ▶ Agreeing to a corrective action plan prior to third violation
- ▶ Amount of damage or threat caused by noncompliance
- ▶ Overall level of company compliance
- ▶ Ability to pay

## Factors to consider that might warrant stronger penalties:

- ▶ Recklessness
- ▶ Physical injury
- ▶ Property damage over \$10,000
- ▶ Failure to pay previous civil penalties or take required corrective action

# Penalty Schedule, Training

- ▶ **Trained employees must include safety officers, management, excavators, or those responsible for calling in locates, scheduling work, managing the operations, or actual excavation.**
  - ▶ **At least 3 employees must be trained.**
  - ▶ **If a company is attending a training other than the initial training, at least one attendee must be a member of management or have a supervisory role.**
  - ▶ **Training shall be scheduled within 30 days of receipt of their notice and successfully completed within 90 days of scheduling. Training is done by Baker Peterson or another qualified trainer.**
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# Case Status

- ▶ **Currently one case going to full Commission -- subject matter excavating through concrete (Cause No. 44275)**
- ▶ **No backlog of cases -- about 150 waiting for documents**
- ▶ **Averaged 125 cases per month last year (about 1,500 in 2012)**
- ▶ **Total cases - 3,899 (from July 2009)**

# Top FAQs

- ▶ **Why do I have a case here when I already paid the operator?**
- ▶ **What do I need to do when I receive a request for information?**
- ▶ **Do I need to attend the Advisory Committee meeting?**
- ▶ **Can I take training even if I do not have a pending penalty?**
- ▶ **Who reported me and why?**