



**SUMMARY OF PROCEDURES
AND
RESPONDENT'S RIGHTS**

**INDIANA DAMAGE TO UNDERGROUND FACILITIES ACT
I.C. 8-1-26**

Note: 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 should retain their own counsel in order preserve their rights.

- Any person or entity may report a violation of the Indiana Damage to Underground Facilities Act ("Act") to the Indiana Utility Regulatory Commission Pipeline Safety Division ("Pipeline Division"), but most reports of violations are communicated regularly to the Pipeline Division from the Indiana Plant Underground Protection Service, commonly referred to as the 811 Association Office; 170 IAC 5-5-2 (a);
- Violations are to be reported to the Pipeline Division within thirty 30 days of their occurrence; 170 IAC 5-5-2 (b);
- The Pipeline Division shall commence an investigation of each report by contacting all known persons or entities involved by sending a written request for information within 60 days; 170 IAC 5-5-3 (a);

You have been contacted and have this current opportunity to present written evidence (documents, photographs, maps, drawings, narrative statements or whatever written materials you want to submit) for the Pipeline Division's investigation of the incident in which you were allegedly involved. If you know of additional interested persons, entities or witnesses that you think should be contacted, you must immediately provide their name, address, telephone number and email address in writing to: Pipeline Safety Division, Indiana Utility Regulatory Commission, 101 West Washington Street, # 1500E, Indianapolis, IN 46204. Be sure to include your Investigation Number on your correspondence. You may also provide your information electronically to: PipelineDamageCase@urc.in.gov

- The Pipeline Division shall forward its findings of violations to the Underground Plant Protection Advisory Committee (“Advisory Committee”), whose role is to make a recommendation to the Indiana Utility Regulatory Commission (“Commission”) for a civil penalty; 170 IAC 5-5-3 (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; I.C. 8-1-26-23 (b);
- The Advisory Committee will provide the person or entity accused of violating the Act, referred to as the “Respondent,” with a copy of the Pipeline Division’s findings in its Investigation Report; 170 IAC 5-5-3 (c);
You are entitled to receive a copy of the Pipeline Division’s Investigation Report that is provided to the Advisory Committee for a possible civil penalty recommendation.
- The Advisory Committee will provide the Respondent with notice and an opportunity to appear before the Advisory Committee prior to the Advisory Committee making a recommendation to the Commission for a civil penalty for violations; 170 IAC 5-5-3 (d) and I.C. 8-1-26-23 (h).
You are entitled to receive notice of the date, time, and location of when the Advisory Committee will consider your case. The Advisory Committee’s deliberations will be conducted in public. You are entitled to attend, but at this stage of the proceedings there is not yet an opportunity for a hearing. There will be no opportunities to present witnesses, to cross examine others’ witnesses or to present additional evidence.
- In lieu of appearing before the Advisory Committee, Respondents may send correspondence to the Advisory Committee regarding the Pipeline Division’s findings so long as it is received seven (7) days in advance; 170 IAC 5-5-3 (e).
If you would like to present responsive evidence in advance of the Advisory Committee’s consideration of your case in response to the Pipeline Division’s Investigation Report, you are entitled to send correspondence, including additional evidence (as generally described above) to the Advisory Committee so long as it is received seven (7) days in advance of your scheduled Advisory Committee deliberation. Your written correspondence must be mailed or filed with the Advisory Committee no later than seven (7) days in advance of your scheduled date. This deadline is necessary in order to allow the Advisory Committee administrative staff adequate time to photocopy the additional documents, organize and distribute to the Advisory Committee members the various case files in advance of the scheduled day when your case will be considered. If you fail to provide additional information in accordance with this deadline, it will not be included in your file to the Advisory Committee and will not be considered. The additional correspondence should be timely mailed in order to be received by the Advisory Committee seven (7) days in advance, or delivered, to:

Underground Plant Protection Advisory Committee, Indiana Utility Regulatory Commission, 101 West Washington Street, # 1500E, Indianapolis, IN 46204 or: PipelineDamageCase@urc.in.gov Be sure to include the Pipeline Division Case Number on your materials.

- The Commission will provide the Respondent with a copy of the Advisory Committee's recommendation, if any, for a civil penalty; 170 IAC 5-5-3 (f); civil penalties are defined in the Act; they are: "(1) Civil penalties consistent with this chapter. (2) Participation in education or training programs developed and implemented by the commission. (3) Warning letters. (4) Development of a plan to avoid future violations of this chapter."; I.C. 8-1-26-23 (h)

You are entitled to receive a copy of the Advisory Committee's advisory recommendation of a civil penalty to the Commission. Potential civil penalties are limited to: a warning letter, civil penalty up to \$10,000.00, a requirement of participation in an education and training program, a development plan to avoid future violations of the Act.

- The Respondent has 30 days to request in writing for a public hearing before the Commission to appeal the Advisory Committee's civil penalty recommendation; 170 IAC 5-5-3 (f) and (g);

If you disagree with the Advisory Committee's recommended civil penalty to the Commission, you have the right to a full-fledged hearing before the Commission. In order to preserve your right to a hearing, you must file a written request for such a hearing with the Commission Secretary, Indiana Utility Regulatory Commission, 101 West Washington Street, # 1500E, Indianapolis, IN 46204. Be sure to include your Case Number with your request. Such a request for a hearing must be filed within 30 days of the date of the Advisory Committee's recommendation. Appeal requests to the Commission will be dated upon their receipt by the Commission.

- If the Respondent requests a public hearing before the Commission to contest the Advisory Committee's recommendation for a civil penalty, the parties are required to comply with the formal rules of practice and procedure of the Commission; 170 IAC 5-5-3 (i);

There are formal procedures required by law to be followed regarding all proceedings pending before the Commission. For instance, corporations and some business entities are required to be represented by an attorney admitted to practice law in Indiana.

- The Commission's formal rules of practice and procedure are specified in "Rule 1.1 Practice and Procedure Before the Commission"; 170 IAC 1-1.1-1.

The formal procedures required to be followed in Commission proceedings are specified in the Indiana Administrative Code and may be found at 170 IAC 1-1.1-1. It may be advisable to seek the advice or representation by an attorney.

- If a monetary civil penalty is imposed by the Commission, Respondents must make payment within 90 days of being assessed to the Commission; 170 IAC 5-5-3 (j);

Monetary civil penalties must be paid to the Commission within 90 days or they will be referred to the Indiana Attorney General's Office for collection. Schedules for compliance with non-monetary civil penalties, such as education and training classes or the approval of a development plan to avoid additional violations, will be addressed in the Commission's final order. All monetary civil penalties are used by the Commission, pursuant to I.C. 8-1-26-24, only upon programming to prevent further pipeline accidents.