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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

Notice of Proposed Rulemaking

IURC RM #09-03  
LSA #10-184

The Indiana Utility Regulatory Commission (the "Commission"), pursuant to IC 8-1-1-3(g) and IC 8-1-26, hereby proposes to add 170 IAC 5-5 to establish procedures for resolving violations of underground plant protection laws. The Commission shall hear public comments on the attached proposed rule at a date and time to be determined, in Suite 220, of the National City Center, 101 W. Washington Street, Indianapolis, Indiana.

The Secretary of the Commission is hereby directed to maintain five (5) copies of the proposed rule continuously on file in the Commission Offices for public inspection, and forward copies of the attached proposed rule to the Indiana Legislative Services Agency for publication in the Indiana Register.

IT IS SO ORDERED.

HARDY, ATTERHOLT AND MAYS CONCUR; LANDIS AND ZIEGNER ABSENT:

APPROVED: MAY 11 2010

I hereby certify that the above is a true and correct copy of the Rule as approved.

*Brenda A. Howe*  
Brenda A. Howe  
Secretary to the Commission

# TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

## Proposed Rule LSA Document #10-184

### DIGEST

Adds 170 IAC 5-5 to establish procedures for resolving violations of underground plant protection laws. Effective 30 days after filing with the Publisher.

#### 170 IAC 5-5

SECTION 1. 170 IAC IAC 5-5 IS ADDED TO READ AS FOLLOWS:

##### 170 IAC 5-5-1 Definitions

Authority: IC 8-1-26-26

Affected: IC 8-1-26

Sec. 1. (a) The definitions in IC 8-1-26, where applicable, and this section apply throughout this rule.

(b) “Advisory committee” means a committee appointed by the governor of the state of Indiana in order to issue findings and recommendations on violations as identified by the pipeline safety division.

(c) “Association” means the Indiana underground plant protection service.

(d) “Commission” means the Indiana utility regulatory commission.

(e) “Pipeline safety division” means the pipeline safety division of the commission or the commission’s designee. (*Indiana Utility Regulatory Commission; 170 IAC 5-5-1*)

##### 170 IAC 5-5-2 Notice of damage to underground facility

Authority: IC 8-1-26-26

Affected: IC 8-1-26-21

Sec. 2. Notice of damage to underground facilities will be made available to the pipeline safety division for investigation from the following:

(1) Damage data reported to the association by:

(A) Persons responsible for an excavation or demolition as required by IC 8-1-26-21; and

(B) Other persons who allege a violation of IC 8-1-26.

(2) Accident reports required by 170 IAC 5-1-24.

(3) Incident reports required by 49 CFR 191 and 49 CFR 195. (*Indiana Utility Regulatory Commission; 170 IAC 5-5-2*)

##### 170 IAC 5-5-3 Process for determining violations of the underground plant protection laws

**Authority: IC 8-1-26-26**

**Affected: IC 8-1-26**

**Sec. 3. (a) The pipeline safety division must investigate alleged violations of IC 8-1-26.**

**(b) The pipeline safety division or its designee must forward its findings of violations of requirements provided in IC 8-1-26 to the advisory committee.**

**(c) Upon receiving findings from the pipeline safety division or its designee, the advisory committee must give the affected parties notice of the pipeline safety division's findings and provide the affected parties thirty (30) days to request an opportunity to appear before the advisory committee with regard to the violation.**

**(d) A request to appear before the advisory committee must be in writing and shall be considered filed upon receipt by the advisory committee.**

**(e) Subject to subsection (c), the advisory committee may recommend to the commission penalties in accordance with IC 8-1-26-23 to be levied upon parties found to have violated IC 8-1-26.**

**(f) Upon receiving a recommendation from the advisory committee, the commission must give the affected parties notice of the advisory committee's recommendation and provide the affected parties thirty (30) days to request a public hearing on the advisory committee's recommendation.**

**(g) A request to appear before the commission must be in writing and shall be considered filed upon receipt by the commission.**

**(h) The commission's review of the advisory committee's recommendation is limited to the record of the pipeline safety division or its designee and any specific determinations made by the advisory committee. Based on its review the commission may:**

**(1) uphold or reverse the finding of a violation by the pipeline safety division or its designee; and**

**(2) approve or disapprove each recommendation of the advisory committee.**

**(i) A person found in violation of IC 8-1-26 may be required to pay a civil penalty pursuant to IC 8-1-26-18 or IC 8-1-26-25, or both. All civil penalties must be paid to the commission within ninety (90) days of being assessed. (*Indiana Utility Regulatory Commission; 170 IAC 5-5-3*)**

**170 IAC 5-5-4 Underground plant protection account**

**Authority: IC 8-1-26-26**

**Affected: IC 8-1-26-18; IC 8-1-26-25**

**Sec. 4. (a) The commission shall administer the account.**

**(b) The account consists of civil penalties issued pursuant to IC 8-1-26-18 or IC 8-1-26-25, or both.** *(Indiana Utility Regulatory Commission; 170 IAC 5-5-4)*