

Indiana Utility Regulatory Commission

2018 UPPAC Update





Introduction

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Overview

- **What is the Indiana Dig Law?**
- **Who does it cover?**
- **What is the process for reviewing possible violations and assessing penalties?**
- **Registration and recordkeeping with the Secretary of State.**
- **Update on the administrative rule.**



The Indiana Dig Law



The Indiana Dig Law – Overview

The Dig Law (Ind. Code chapter 8-1-26 – Damage to Underground Facilities) covers the requirements when excavating or performing demolitions and actions to take when an underground facility is damaged.

2009	Indiana Dig Law was enacted.
2010	The Governor appoints the UPPAC
2014 and beyond	Various amendments to the dig law, providing exceptions to using mechanized equipment in the tolerance zone and including adding design tickets



The Indiana Dig Law – Who is affected?

- **Anyone performing an excavation or demolition**
 - *Traditional excavators*
 - *Homeowners*
 - *Anyone moving earth or putting something into or removing something from the ground, including plumbers, landscapers, surveyors, installers of fences, tents, concrete*
 - *Anyone using nontraditional forms of excavation such as setting form pins and using probe rods (not operators)*
- **Anyone with underground utilities, although the penalty related to locating only applies to gas operators**



The Indiana Dig Law – What are possible violations

Excavators may be subject to penalties for failing to:

- *Keep mechanized equipment out of the tolerance zone (with limited exceptions)*
- *Plan to avoid damage and minimize interference*
- *Properly use a dig ticket*
 - *White lining when required*
 - *Making a false emergency ticket*
 - *Altering locate markings*
 - *Notify 811 of illegible marks*





The Indiana Dig Law – What are possible violations

Operators may be subject to penalties for:

- *Failing to timely and accurately marking underground facilities (gas operators only)*
- *Failing to joining Indiana 811*
- *Altering locate marks*





The Review Process



The Review Process – Pipeline Safety Division

Pipeline Safety Division (PSD) of the IURC

- The PSD is required to investigate reported incidents of alleged statutory violations involving underground pipeline safety.*
- The PSD investigates about 200 cases per month using an investigative staff equivalent of two full-time employees*



The Review Process – UPPAC

UPPAC

- *Comprised of excavators, facility operators, investor and municipal utilities, Indiana 811 and a facility locate marking company*
- *Recommends penalties in excavation damage cases, including warning letters, training, corrective action plans, and monetary penalties*
- *Follows a penalty schedule*



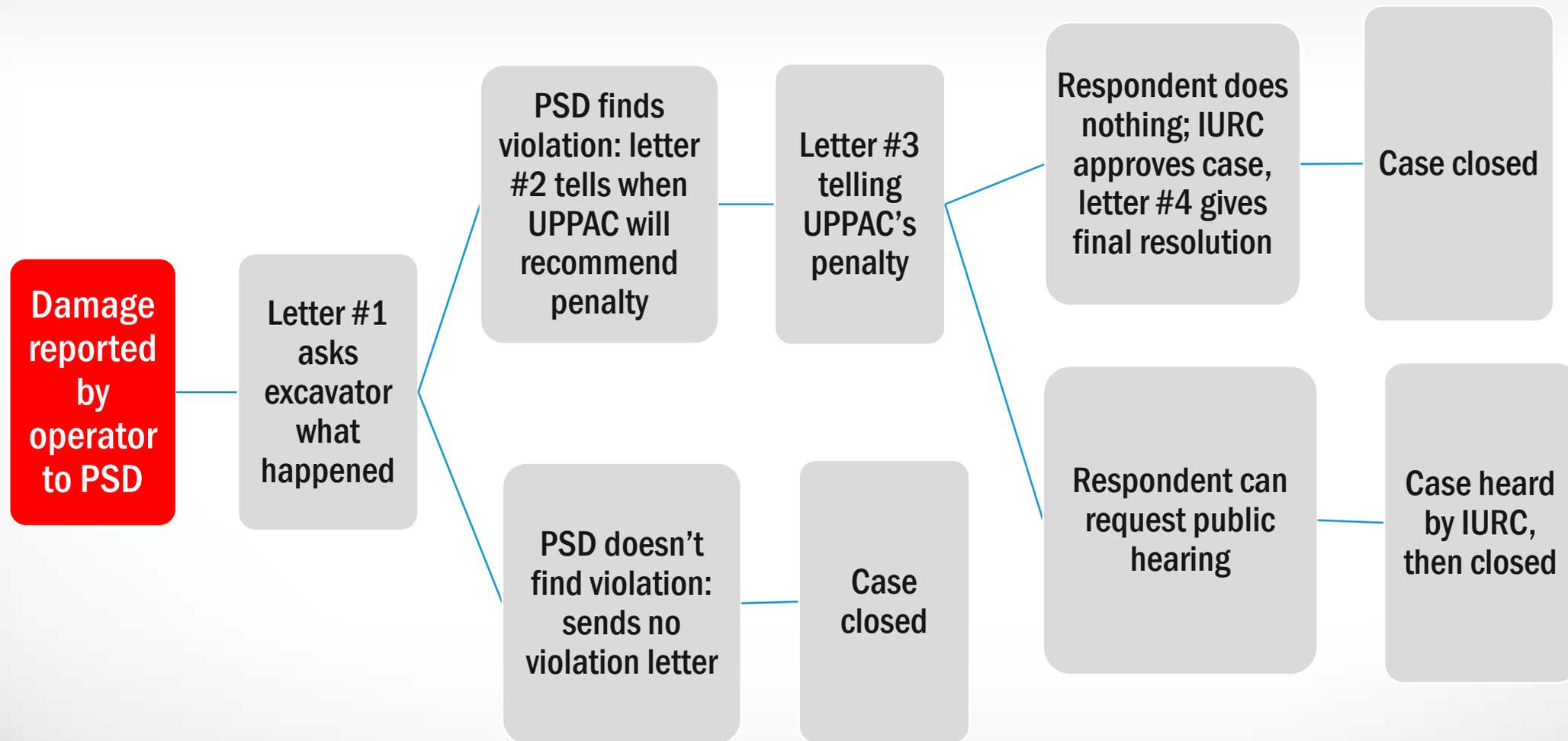
The Review Process – IURC

IURC

- *Upholds or reverses the PSD's finding of violation and approves or disapproves the UPPAC's penalty recommendation.*
- *Conducts public hearings when they are properly requested in a case.*



The Review Process – A four-letter process





Case Information



Determining the Facts of the Case: Site visits

- **PSD** does not generally conduct site visits, instead relying on reports from the excavator and operators
- **UPPAC** does not conduct site visits, relying on reports from the excavator and operators and the investigation summary from the **PSD**
- **IURC** does not conduct site visits, relying on reports from the excavator and operators, the investigation summary from the **PSD**, the recommendation form from the **UPPAC**, and, in public hearings, any testimony submitted by the parties.



Determining the Facts of the Case: Excavator responses

- Excavators respond in about half the cases.
- Excavators are encouraged to respond using an investigation form provided on the IURC website and provide all information they believe is relevant, including dig tickets, pictures, and a narrative of what happened.



Determining the Facts of the Case: Operator responses

- Operators are required by 170 IAC 5-3-3(e)(6) to report all damages to their facilities.
- The level of detail of operator responses vary. PSD staff is considering providing a standard response form, similar to what is provided for excavators.
- Operators are encouraged to provide as much detail as possible in responses.



Determining the Facts of the Case: Providing useful operator responses

Provide a Narrative

Upon my arrival, the First Responding Gas Serviceman had arrived just in front of myself. The contractor and fire department were on site as well.

The damage occurred in the front of the property just East of the driveway to this address. The contractor was removing the old collapsed steel storm water culvert that went under the driveway.

A ticket search showed the contractor was working on an EXPIRED ticket prior to their new ticket that was just called in only hours earlier to be marked out and to be valid.

The contractor was under the impression that without seeing any gas markings from their now expired ticket, that the gas facilities were in the rear easement. The contractor proceeded even though there were no OK markings found anywhere for a positive response from Nipsco for the dig area to have been CLEAR of Nipsco Gas and Electric facilities. The contractor had removed the concrete driveway apron and was removing the old culvert that was under the driveway when they caught the 3/4" steel gas service line to this address with the Trackhoe and pulled it of the curb valve shut off, thus causing



Determining the Facts of the Case: Providing useful operator responses

Provide Useful Pictures





Determining the Facts of the Case: Providing useful operator responses

Your Narrative and Pictures Should Be Consistent

“The damage occurred in the front of the property just East of the driveway to this address. The contractor was removing the old collapsed steel storm water culvert that went under the driveway.”





Determining the Facts of the Case: Providing useful operator responses

Here is a non-exhaustive list of data the PSD finds useful in its investigations. You can never provide too much information.

Post-locate photos	A copy of the dig ticket
Post-damage photos	The size, diameter, and depth of the facility
Within photos, descriptions, measurements, landmarks	If the facility was not located or located incorrectly, why
Photos from various angles	A narrative of what happened
Sketches	Length of outage



Cases by the Numbers

Cases investigated by the PSD

Year	Cases
2013	1,830
2014	2,180
2015	2,061
2016	2,058
2017	1,775

Penalty recommendations by the UPPAC

Year	Cases
2013	1,055
2014	1,470
2015	1,304
2016	1,546
2017	1,314



Sec. of State Requirements



Business Requirements

- **Senate Enrolled Act 125 codifies Ind. Code chapter 8-1-26.5, effective July 1, 2018.**
- **There are new responsibilities and requirements for certain underground utility excavators and underground facility operators.**
- **These relate to registration with the Indiana Secretary of State (SOS) and acknowledgement of the Dig Law.**



Excavator Requirements

- **AFFECTED** – Companies performing excavations and demolitions, who are otherwise required to register with the **SOS**: business corporations, nonprofit corporations, limited liability partnerships, limited partnerships, limited liability companies, out-of-state businesses
- **DUTIES** – Include a signed statement saying the excavator will comply with the **Dig Law**:
 - New companies include it with initial filings
 - Companies with a Business Entity Report due include it there
 - Otherwise, add it through a Miscellaneous Filing (never through Articles of Correction)



Excavator Requirements (cont.)

- **DUTIES** – Provide documentation to the utility or communication service provider client: If an excavator contracts with a utility or communication service provider to do excavations or demolitions, the excavator must provide proof to the utility or communication service provider of the proper SOS registration and the signed statement that the excavator (and its employees) will comply with Ind. Code chapter 8-1-26 (aka the Dig Law).



Operator Requirements

- **AFFECTED** – Utilities and communication service providers: If your company contracts with someone for excavations or demolitions, this applies to you.
- **DUTIES**
 - **Obtain proof of SOS compliance:** Ensure you have this proof from your contractors.
 - **Provide records to the PSD/IURC:** The PSD/IURC can request, during an investigation or once per calendar year outside of an investigation, a list of your excavation/demolition contractors operating in Indiana.



Penalties

- The Attorney General may pursue civil penalties for out-of-state contractors that fail to properly register and violate the Dig Law.
- Fine are as high as \$10,000.



Rule Update



Rule Update

- **The Dig Law requires the IURC to adopt rules to carry out its responsibilities.**
- **The rule is about seven years old and was drafted prior to the PSD and UPPAC ever reviewing a case.**
- **We are currently considering updates to the rule and seeking feedback from interested parties.**



Rule Process

- **Rule Development**
- **Determination of Fiscal and Financial Impact**
- **Moratorium Approval**
- **Statutory Process**
 - *Notice of Intent*
 - *Approval of Fiscal and Financial Impact*
 - *Proposed Rule*
 - *Public Hearing and Comment Period*
 - *Final Rule*
 - *Approval*
 - *Effective Rule*



Topics

- The topics below are being considered for the rule. Other topics can be considered.
 - *Defining “two full working day”*
 - *Defining “either side”*
 - *Whether and how to define “probing”*
 - *How to treat coating damages*
 - *Defining “incentives” and possibly noting metric requirements*



Questions?



Indiana Utility Regulatory Commission

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