

ATTACHMENT C

Chapter 26. Damage to Underground Facilities

Application of chapter

IC 8-1-26-1 Sec. 1. (a) Except as provided by this section, this chapter does not apply to the following:

- (1) Excavation that is performed:
 - (A) only with a hand tool;
 - (B) on property owned or controlled by the person performing the excavation; and
 - (C) to a depth not greater than twelve (12) inches.
- (2) Excavation using only animals.
- (3) Tilling of soil for agricultural purposes, such as plowing, planting, and combining.
- (4) Surface coal mining and reclamation operations conducted under a permit issued by the natural resources commission under IC 14-34.
- (5) Railroad right-of-way maintenance or operations.
- (6) Underground probing to determine the extent of gas migration.

(b) This chapter does apply to blasting, setting drainage tile, subsoiling, and other subsurface activities.

(c) Sections 16, 19, 20, and 22 of this chapter apply to the construction and installation of railroad signal facilities and drainage facilities at public grade crossings.

"Account" defined

IC 8-1-26-1.3 Sec. 1.3. As used in this chapter, "account" refers to the underground plant protection account established by section 24 of this chapter.

"Advisory committee" defined

IC 8-1-26-1.5 Sec. 1.5. As used in this chapter, "advisory committee" refers to the underground plant protection advisory committee established by section 23 of this chapter.

"Approximate location" defined

IC 8-1-26-2 Sec. 2. As used in this chapter, "approximate location" means a strip of land at least four (4) feet wide but not wider than the width of the underground facility plus two (2) feet on either side of the outer limits of the physical plant.

"Association" defined

IC 8-1-26-3 Sec. 3. As used in this chapter, "association" means an organization that is:

- (1) formed in Indiana to provide for mutual receipt of notice of excavation or demolition for the organization's members;
- (2) known as the Indiana Underground Plant Protection Service (or its successor organization); and
- (3) accessed by dialing the abbreviated dialing code 811, as designated by the Federal Communications Commission as the nationwide toll free number to be used by state One Call systems.

"Damage" defined

IC 8-1-26-4 Sec. 4. As used in this chapter, "damage" means:

- (1) the substantial weakening of structural or lateral support of an underground facility;
- (2) the penetration or destruction of a protective coating, a housing, or another protective device of an underground facility;
- (3) the partial or complete severance of an underground facility; or
- (4) rendering any underground facility inaccessible.

"Demolish" defined

IC 8-1-26-5 Sec. 5. As used in this chapter, "demolish" means an operation in which a structure or mass of material is wrecked, raised, rendered, moved, or removed by means of tools, equipment, or discharge of explosives.

"Excavate" defined

IC 8-1-26-6 Sec. 6. As used in this chapter, "excavate" means an operation for the movement, placement, or removal of earth, rock, or other materials in or on the ground by use of tools or mechanized equipment or by discharge of explosives, including augering, backfilling, boring, digging, ditching, drilling, driving, grading, jacking, plowing in, pulling in, ripping, scraping, trenching, and tunneling.

"Facility" defined

IC 8-1-26-7 Sec. 7. As used in this chapter, "facility" means a line or system used for producing, storing, conveying, transmitting, or distributing communication, information, electricity, gas, petroleum, petroleum products, hazardous liquids, carbon dioxide fluids, water, steam, or sewerage. The term includes pipeline facilities.

"Imminent danger to life, health, property, or loss of service" defined

IC 8-1-26-8 Sec. 8. As used in this chapter, "imminent danger to life, health, property, or loss of service" means there is a substantial likelihood that loss of life, health, property, or service will result before the procedures under sections 16 and 18 of this chapter can be completed.

"Mechanized equipment" defined

IC 8-1-26-9 Sec. 9. As used in this chapter, "mechanized equipment" means equipment operated by means of mechanical power, including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, hydroexcavators, and other equipment that may cause damage to underground facilities.

"Operator" defined

IC 8-1-26-10 Sec. 10. As used in this chapter, "operator" means a person who owns or operates an underground facility, other than an underground facility that:

- (1) is located on real property that the person owns or occupies; and
- (2) the person operates for the person's benefits.

"Person" defined

IC 8-1-26-11 Sec. 11. As used in this chapter, "person" means an individual, a corporation, a partnership, a limited liability company, an association, or other entity organized under the laws of any state. The term includes state, local, and federal agencies. The term does not include the association.

"Pipeline facilities" defined

IC 8-1-26-11.2 Sec. 11.2. As used in this chapter, "pipeline facilities" has the meaning set forth in IC 8-1-22.5-1(d).

"White lining" defined

IC 8-1-26-11.5 Sec. 11.5. As used in this chapter, "white lining" means the act of marking the route or boundary of a proposed excavation or demolition with white paint, flags, or stakes, or a combination of white paint, flags, and stakes.

"Working day" defined

IC 8-1-26-12 Sec. 12. As used in this chapter, "working day" means every day except Saturday, Sunday, and state and national legal holidays.

Permit authorizing excavation or demolition; compliance with chapter

IC 8-1-26-13 Sec. 13. A permit issued in accordance with a law authorizing excavation or demolition operations does not relieve a person from the responsibility of complying with this chapter.

Excavation or demolition of structure served by underground facility; location of affected structures

IC 8-1-26-14 Sec. 14. Except as provided in section 19 of this chapter, a person may not excavate real property or demolish a structure that is served or was previously served by an underground facility without first ascertaining in the manner prescribed by sections 16 and 18 of this chapter the location of all underground facilities in the area affected by the proposed excavation or demolition.

Recording location of underground facilities; updating information; fees; association membership; penalty

IC 8-1-26-15 Sec. 15. (a) An operator that has underground facilities located in Indiana must become a member of the association and shall provide the following information to the association:

(1) The name of each township and county in which the operator has underground facilities, including those facilities that have been abandoned in place by the operator but not yet physically removed.

(2) The name of the operator.

(3) The name, title, address, and telephone number of the operator's representative designated to receive the notice of intent required by section 16 of this chapter.

(b) An operator shall report any changes in the information contained in the list recorded under subsection (a) with the association within thirty (30) calendar days of the change. The document reflecting the changes shall be cross-referenced to the original information reported under subsection (a).

(c) A person other than an operator may be a member of the association.

(d) A person that is required, but fails, to maintain membership in the association after December 31, 2009, may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed one hundred dollars (\$100). Each day that a person that is required, but fails, to maintain membership in the association constitutes a separate violation for purposes of imposing a fine under this subsection.

Notice to excavate or demolish; perform white lining; penalties

IC 8-1-26-16 Sec. 16. (a) Except as provided in section 19 of this chapter, before commencing an excavation or demolition operation described in section 14 of this chapter each person responsible for the excavation or demolition shall:

(1) serve notice on the association of the person's intent to excavate or demolish; and

(2) perform white lining at the site of the excavation or demolition if the person responsible for the excavation or demolition is unable to provide to the association the physical location of the proposed excavation or demolition by one (1) of the following means:

(A) A street address.

(B) A legal description of the location.

(C) A highway location using highway mile markers or cross streets.

The notice required under subdivision (1) must be received at least two (2) full working days but not more than twenty (20) calendar days before the commencement of the work. Upon receiving the notice, the association immediately shall notify each operator that has underground facilities located in the proposed area of excavation or demolition. A person responsible for excavation or demolition may commence work before the elapse of two (2) full working days if all affected operators have notified the person that the location of all the affected operators' facilities have been marked or that the affected operators have no facilities in the location of the proposed excavation or demolition.

(b) A county recorder who receives an inquiry from a person seeking to provide notice of an excavation or a demolition under this section shall refer the person to the association. After receiving a notice under this section, the association shall provide notice of the proposed excavation or demolition to each member operator that has underground facilities located in the proposed area of excavation or demolition.

(c) A person responsible for demolition must give an operator a reasonable amount of time, as mutually determined by the operator, the person responsible for demolition, and the project owner, to remove or protect the operator's facilities before demolition of the structure is commenced.

(d) The notice required by subsection (a) must contain the following information:

(1) The name, address, and telephone number of the person serving the notice, and, if different, the person responsible for the excavation or demolition.

(2) The starting date, anticipated duration, and type of excavation or demolition operation to be conducted.

(3) The location of the proposed excavation or demolition.

(4) Whether or not explosives or blasting are to be used.

(5) The approximate depth of excavation.

(6) Whether the person responsible for the proposed excavation or demolition intends to perform white lining at the site of the proposed excavation or demolition.

(e) The person responsible for the excavation or demolition shall submit a separate locate request along with the notice provided under subsection (d)(3) to the association as follows:

(1) Within an incorporated area, for each one thousand five hundred (1,500) linear feet of proposed excavation or

demolition.

(2) In an unincorporated area, for each two thousand five hundred (2,500) linear feet of proposed excavation or demolition.

(f) The association shall maintain an adequate record of the notice required by this section for seven (7) years to document compliance with this chapter. A copy of the record shall be furnished to the person giving notice to excavate or demolish upon written request.

(g) A person that:

- (1) causes damage to a pipeline facility located in an area of excavation or demolition;
- (2) is required to provide notice under this section for the excavation or demolition; and
- (3) fails to provide the notice;

may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed ten thousand dollars (\$10,000).

(h) A person that:

- (1) causes damage to a pipeline facility located in an area of excavation or demolition;
- (2) is required to perform white lining under subsection (a)(2); and
- (3) fails to perform white lining before an operator of a pipeline facility arrives at the site of the proposed excavation or demolition to mark the operator's pipeline facilities;

may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed ten thousand dollars (\$10,000).

Association membership; notice guidelines

IC 8-1-26-17 Sec. 17. (a) An operator that has underground facilities located in Indiana must be a member of the Indiana Underground Plant Protection Service or its successor organization. The articles of incorporation or the bylaws of the Indiana Underground Plant Protection Service or its successor organization shall do the following:

(1) Provide that the board of directors of the Indiana Underground Plant Protection Service or its successor organization is composed of:

(A) five (5) members representing electric utilities other than municipal electric utilities, including corporations organized or operating under IC 8-1-13 or corporations organized under IC 23-17, some of whose members are local district corporations (as described in IC 8-1-13-23);

(B) five (5) members representing investor owned gas utilities, including pipelines;

(C) five (5) members representing telecommunications providers, at least one (1) of whom is a provider of cable television service;

(D) five (5) members representing water or sewer utilities other than municipal water or sewer utilities; and

(E) five (5) members representing political subdivisions, including municipal utilities, which must include the political subdivision that owns the largest waterworks utility in Indiana.

(2) Require the affirmative vote of at least sixty percent (60%) of each category of members appointed under subdivision (1) to approve an increase, a decrease, or any other adjustment to the membership dues, rates, tariffs, locate fees, or any other charges imposed by the Indiana Underground Plant Protection Service or its successor organization.

(b) The association shall provide for mutual receipt of notice of excavation or demolition operations under section 16 of this chapter.

(c) The association shall:

(1) annually update the association's base map data, including street addresses; and

(2) make reasonable efforts to reduce incorrect locate requests issued to the association's members.

(d) The association shall develop and implement guidelines to provide that, for purposes of providing notice to an operator under section 16 of this chapter, the time of receipt of a notice of an intent to excavate or demolish is determined as follows:

(1) For a notice that is received between the hours of 7 a.m. and 6 p.m. on a working day, at the time of receipt.

(2) For a notice that is received after 6 p.m. on a working day and before 7 a.m. on the following working day, at 7 a.m. on the following working day.

Notice contents; alteration of facility locate markings; penalties

IC 8-1-26-18 Sec. 18. (a) Each operator notified under section 16 of this chapter shall, in two (2) full working days after receiving the notice of intent provided in section 16 of this chapter, supply to the person responsible for the

excavation or demolition the following information, using maps when appropriate:

(1) The approximate location and description of all the operator's underground facilities that may be damaged as a result of the excavation or demolition.

(2) The location and description of all facility markers indicating the approximate location of the underground facilities.

(3) Any other information that would assist that person in locating and avoiding damage to the underground facilities, including providing adequate temporary markings indicating the approximate location of the underground facility and locations where permanent facility markers do not exist.

(b) Facility locate markings must consist of paint, flags, or stakes or any combination that mark the approximate location of the underground facilities. The method of marking must be appropriate for the location of the underground facilities.

(c) Color coding of facility locate markings indicating the type of underground facility must conform to the following color coding:

Facility and Type of Product	Specific Group	Identifying Color
(1) Electric power distribution and transmission		Safety red
(2) Municipal electric systems		Safety red
(3) Gas distribution and transmission		High visibility safety yellow
(4) Oil distribution and transmission		High visibility safety yellow
(5) Dangerous materials, product lines, steam lines		High visibility safety yellow
(6) Telephone and telegraph systems		Safety alert orange
(7) Cable television		Safety alert orange
(8) Police and fire communications		Safety alert orange
(9) Water systems		Safety precaution blue
(10) Sewer systems		Safety green
(11) Proposed excavation		White

(d) Each operator notified under section 16 of this chapter shall, within two (2) full working days of receiving the notice of intent provided in section 16 of this chapter, make a reasonable attempt to provide notification to the person responsible for the excavation or demolition if the operator has no facilities in the location of the proposed excavation or demolition.

(e) This section does not apply to an operator making an emergency repair to its own underground facility.

(f) This subsection applies if all of the following occur:

(1) An operator of a pipeline facility is required to supply information, including facility locate markings, under subsection (a) to a person responsible for an excavation or demolition.

(2) The operator of the pipeline facility fails to supply the information described in subdivision (1) or provides incorrect facility locate markings.

(3) The operator's pipeline facility is damaged during the excavation or demolition for which the operator was required to supply the information described in subdivision (1).

The operator of the pipeline facility may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed one thousand dollars (\$1,000).

(g) Subsection (f) does not apply to an operator that:

(1) is repairing its own underground facilities; or

(2) fails to supply required information or provide facility locate markings due to factors beyond the control of the operator.

(h) A person that knowingly moves, removes, damages, or otherwise alters a facility locate marking supplied under this section may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed ten thousand dollars (\$10,000). This subsection does not apply to a person that moves, removes, damages, or otherwise alters a facility locate marking as part of the excavation or demolition for which the facility locate markings were supplied.

Emergency excavation or demolition; notice requirements; penalties

IC 8-1-26-19 Sec. 19. (a) A person responsible for emergency excavation or demolition to ameliorate an imminent danger to life, health, property, or loss of service is not required to comply with the notice requirements of section 16 of this chapter. However, that person shall:

- (1) give, as soon as practicable, oral notice of the emergency excavation or demolition to the association; and
- (2) request emergency assistance from each operator identified by the association as having underground facilities located in the area of the emergency excavation or demolition in locating and providing immediate protection to the operator's underground facilities.

(b) This section applies to an operator making an emergency repair to its own underground facility.

(c) A person that knowingly provides false notice of an emergency excavation or demolition to the association under subsection (a) may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed one thousand dollars (\$1,000).

Duties of persons responsible for excavation or demolition; penalties

IC 8-1-26-20 Sec. 20. (a) In addition to the notice required in section 16 of this chapter, a person responsible for an excavation or demolition operation under section 14 of this chapter shall do all of the following:

- (1) Plan the excavation or demolition to avoid damage to or minimize interference with underground facilities in and near the construction area.
- (2) Maintain a clearance between an underground facility, as marked by the operator, and the cutting edge or point of mechanized equipment. The clearance must be not less than two (2) feet on either side of the outer limits of the physical plant. However, if the clearance is less than two (2) feet, exposure of the underground facility may be accomplished only by the use of hand excavation, air cutting, or vacuum excavation.
- (3) Notify the association if:
 - (A) there is evidence of an unmarked pipeline facility in the area of the excavation or demolition; or
 - (B) the markings indicating the location of an underground facility have become illegible.

(b) A person who:

- (1) violates subsection (a); and
- (2) causes damage to a pipeline facility in the area of the excavation or demolition;

may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed ten thousand dollars (\$10,000).

Demolition or excavation resulting in damage to underground facility; escape of flammable, toxic, or corrosive gas or liquid; duties of operator

IC 8-1-26-21 Sec. 21. (a) Except as provided in subsection (b), a person responsible for an excavation or a demolition operation under section 14 of this chapter that results in damage to an underground facility shall:

- (1) immediately upon discovery of the damage, notify the operator of the facility and the association of the location and nature of the damage; and
- (2) allow the operator of the facility reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of the facility.

(b) A person responsible for an excavation or a demolition operation under section 14 of this chapter that results in damage to an underground facility permitting the escape of flammable, toxic, or corrosive gas or liquid shall:

- (1) immediately upon discovery of the damage, notify the operator and the association and local police and fire departments having jurisdiction; and
- (2) take other action necessary to protect persons and property and to minimize the hazards until arrival of the operator's personnel or police and fire personnel.

Pecuniary loss suffered by operator; civil action; damages; defenses; injunction

IC 8-1-26-22 Sec. 22. (a) If an operator suffers a pecuniary loss as a result of a violation of this chapter, the operator may bring a civil action against the person who caused the loss for the following:

- (1) An amount equal to the operator's actual damage to the facility.
- (2) The costs of the action.
- (3) A reasonable attorney's fee.

(b) At the court's discretion, a court having jurisdiction may award punitive damages up to three (3) times the operator's actual damage.

(c) It is a defense to an action brought under this chapter if an operator fails to comply with the duties imposed under this chapter.

(d) In addition to the remedies described in subsection (a), an operator may bring an action to enjoin a person

excavating or demolishing a structure in an area that includes the operator's facilities until that person complies with this chapter.

Underground plant protection advisory committee established; membership; duties and powers

IC 8-1-26-23 Sec. 23. (a) The underground plant protection advisory committee is established.

(b) The advisory committee consists of the following seven (7) members appointed by the governor:

- (1) One (1) member representing the association.
- (2) One (1) member representing investor owned gas utilities.
- (3) One (1) member representing operators of pipeline facilities or pipelines.
- (4) One (1) member representing municipal gas utilities.
- (5) Two (2) members representing commercial excavators.
- (6) One (1) member representing providers of facility locate marking services.

(c) The term of a member is four (4) years. A member of the advisory committee serves at the pleasure of the governor. The governor shall fill a vacancy in the membership of the advisory committee for the unexpired term of the vacating member.

(d) The association and the commission shall provide staff support and meeting space to the advisory committee.

(e) The members of the advisory committee shall elect a chairperson. The advisory committee shall meet at the call of the chairperson.

(f) The affirmative vote of a majority of members appointed under subsection (b) is required to take action.

(g) The pipeline safety division shall investigate alleged violations of this chapter. If the pipeline safety division finds that a person has violated this chapter, the pipeline safety division shall forward its finding to the advisory committee.

(h) The advisory committee shall act in an advisory capacity to the commission concerning the implementation and enforcement of this chapter. In this capacity, and subject to subsections (i) and (j), the advisory committee may recommend the following penalties with respect to persons that the pipeline safety division has found to violate this chapter:

- (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.

Before making a recommendation under this subsection, the advisory committee shall provide notice to the person found to be in violation of this chapter of an opportunity to appear before the advisory committee with respect to the violation.

(i) The advisory board may consider the following when making a recommendation under subsection (h):

- (1) Whether the person found to be in violation of this chapter is a first time or repeat violator.
- (2) Whether the person found to be in violation of this chapter is:
 - (A) a homeowner or tenant performing excavation or demolition:
 - (i) on the homeowner's or tenant's residential property; and
 - (ii) outside an operator's easement or right of way; or
 - (B) a business entity.
- (3) The severity of the violation.

(j) If the advisory committee determines that:

- (1) the person found to be in violation of this chapter is a first time violator described in subsection (i)(2)(A); and
- (2) the violation did not result in physical harm to a person;

the advisory committee may not recommend a penalty described in subsection (h)(1) or (h)(4).

(k) Upon receiving a recommendation from the advisory committee under subsection (h), and after notice and opportunity for a public hearing, the commission shall do the following as applicable:

- (1) Uphold or reverse the finding of a violation by the pipeline safety division under subsection (g).
- (2) Approve or disapprove each recommendation of the advisory committee.
- (3) Collect any civil penalties and deposit the penalties in the underground plant protection account.

Underground plant protection account

IC 8-1-26-24 Sec. 24. (a) The underground plant protection account is established to provide funding for the

following programs established and administered by the commission:

- (1) Public awareness programs concerning underground plant protection.
 - (2) Training and educational programs for contractors, excavators, locators, operators, and other persons involved in underground plant protection.
 - (3) Incentive programs for contractors, excavators, locators, operators, and other persons involved in underground plant protection to reduce the number of violations of this chapter.
- (b) The commission shall administer the account.
 - (c) The treasurer of state shall invest money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the account.
 - (d) Money in the account at the end of a state fiscal year does not revert to the state general fund.
 - (e) The expenses of administering the account shall be paid from money in the account.
 - (f) The account consists of penalties deposited under section 23(i) of this chapter.

Penalties under IC 8-1-22.5 for pipeline operators

IC 8-1-26-25 Sec. 25. An operator of a pipeline facility that violates this chapter may be subject to a civil penalty imposed by the commission under IC 8-1-22.5 in addition to a penalty or fine imposed under this chapter.

Authority of commission to adopt rules

IC 8-1-26-26 Sec. 26. The commission shall adopt rules under IC 4-22-2 to carry out its responsibilities under this chapter.