

Indiana Underground Plant Protection Advisory Committee

Penalty Schedule for violations of IC 8-1-26

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1. Purpose of this Document

This is a guidance document to assist the Indiana Underground Plant Protection Advisory Committee (“Committee”) in recommending penalties under Indiana code chapter 8-1-26. It provides general principles for recommending penalties. However, it is not meant to hinder case-by-case decision-making by the Committee based on specific facts of a case.

The Pipeline Safety Division of the Indiana Utility Regulatory Commission (“IURC”) is the entity authorized to make a finding of violation. The Committee acts in an advisory capacity to the IURC concerning the implementation and enforcement of the penalties. Upon receiving a recommendation from the Committee, and after notice and opportunity for a public hearing, the IURC upholds or reverses the finding of a violation by the Pipeline Safety Division and approves or disapproves the recommendation.

2. Guiding Principles for Penalty Schedule

- The objective of this schedule is to ensure public safety.
- The focus will be to educate parties and encourage compliance, rather than being punitive.
- Penalties should be imposed in steps, with each step more severe.
- Each step should have a set penalty, with the Committee having the ability to consider a variety of factors that could increase or decrease the penalty. The Committee should have the ability to reduce penalties if the contractor or operator shows a strong commitment to compliance.
- The penalty level should be reset after a certain timeframe in order to credit the excavator for going a certain period without violations.
- The 12-month period used in the schedule is based on when the violation occurred, not when it was reported or when the matter was referred to Committee.

3. Penalty Schedules

3.1 Professional Excavators (an excavator that is not considered an “occupant” under section 3.2)

3.1.1 Penalties

Pursuant to IC 8-1-26-16(h) [notice], IC 8-1-26-16(i) [white lining], and IC 8-1-26-20(b) [two (2) foot clearance], the maximum civil penalty is \$10,000.

First violation	Warning letter
Second violation	Mandatory Training*
Third violation	\$1,500 civil penalty, with chance to mitigate \$1,500 if respondent takes training
Fourth violation	\$3,000 civil penalty, considering mitigating and aggravating circumstances
Fifth or more violation	Escalates by \$500 civil penalty for every damage that occurs post Sept. 1, 2013 up to \$5,000, considering mitigating and aggravating circumstances. Penalties for additional violations will not continue to escalate unless there are aggravating or reckless circumstances in that particular case.

* The Mandatory Training penalty automatically converts to a \$5,000 civil penalty if training is not completed within 180 days of the Indiana Utility Regulatory Commission’s Final Order.

If a penalty is escalated, the next penalty will start at the level higher than the previous penalty. For example, if the first penalty is escalated to training (the second penalty level), the second penalty will be treated as a third penalty.

3.1.2 Penalty Escalation for Subsequent Violation after Previous Failure to Complete Mandatory Training

Any failure to complete	Add to the standard penalty \$1,500, with the chance to mitigate \$1,500 if the excavator takes training
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3.1.3 Penalty Escalation for Recklessness

“Recklessness” means actions marked by lack of proper caution, careless of consequences, or irresponsibility. It also includes intentional disregard of the law.

Any violation	Mandatory training* and a monetary civil penalty of up to \$10,000
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3.1.4 Penalty Escalation for Having No Ticket

This applies when there is no evidence that a dig ticket or locates were requested. Using a ticket in someone else’s name is not considered evidence of a ticket. It is considered to be a “no ticket” situation when an existing ticket has been expired for 20 or more days.

First or second violation	Mandatory training
Violations after the mandatory training level	An additional \$1,000 fine will be added to the standard penalty

3.1.5 Penalty Escalation for Concealment of Damage

This applies when the excavator concealed the damage by using a leak clamp or other means of making unauthorized repairs, regardless of the number of prior violations.

First concealment violation	At minimum, mandatory training and a \$1,500 fine will be added to the standard penalty
Second concealment violation	At minimum, an additional \$5,000 fine will be added to the standard penalty
Third concealment violation	The Advisory Committee shall use its discretion to recommend a fine of at least \$5,000 and consider requiring training

3.1.6 Penalty Escalation Based on Company Factors

Penalties may be escalated, in particular the adding of mandatory training, considering the following:

- How many violations the excavator has and, in particular, how many violations were recent
- The types of violations
- How recently the company has had training and how many employees attended
- Specific actions or inactions by the excavator that do not follow best excavation practices

3.1.7 Reducing Penalties – “Resetting” the Schedule

If a violation occurs at least 12 months after the previous violation, the schedule drops back to the third violation level unless there was only one prior violation; if so, the schedule drops back to the second violation. The schedule will not reset for an excavator that has failed to complete mandatory training. Under this circumstance, an excavator must complete standard training, as defined herein, before becoming eligible for reduced penalties.

3.1.8 Multiple Locations or Divisions

An entity with multiple locations and staff will be considered one entity for purposes of the penalty schedule. Entities will only be treated as separate if they can provide discreet federal ID numbers. If it is subsequently discovered that the entities do not have discreet federal ID numbers, then the entities that are currently treated as separate will be recombined and will continue at one step above the lowest penalty level the entity currently has or at the fourth violation level, whichever is lower.

3.1.9 Factors to Decrease or Increase Penalties

Factors to consider that might warrant lesser penalties:

- Factors the Advisory Committee deems appropriate

Generally, penalties will not be reduced simply because the respondent already completed voluntary training. However, voluntary training is encouraged to increase safety and reduce future violations and associated penalties.

In addition to the foregoing factor, other factors that might warrant stronger penalties:

- Failure to report damage to Indiana 811
- Failure to report release of gas to Indiana 811 and local police and fire departments having jurisdiction (911)
- Attempts to temporarily repair the damage or stop the flow of gas
- Physical injury
- Property damage of over \$10,000
- Failure to pay previous civil penalties
- Other factors the Advisory Committee deems appropriate

3.2 Occupant Excavator (as determined by the Advisory Committee, an occupant excavator typically means an individual working as a homeowner, tenant, or a volunteer for a non-profit entity)

3.2.1 Penalties

Pursuant to IC 8-1-26-16(h) [notice], IC 8-1-26-16(i) [white lining], and IC 8-1-26-20(b) [two (2) foot clearance], the maximum civil penalty is \$10,000.

Initial violation	Warning letter ¹
Second and subsequent violation within 12 months of the previous damage date	\$100, escalating by \$100 for each occurrence, considering mitigating and aggravating circumstances

3.2.2 Reducing Penalties – “Resetting” the Schedule

If a violation occurs at least 12 months after the previous violation, the schedule starts over (i.e. that violation is considered an initial violation).

3.2.3 Factors to Decrease or Increase Penalties

Factors to consider that might warrant lesser penalties:

- Level of culpability
- Shows good faith effort to comply after notice of violation
- Amount of damage or threat caused by noncompliance
- Ability to pay
- Other factors the Advisory Committee deems appropriate

¹ Per IC 8-1-26-23(j), first time occupant excavators cannot be assessed a penalty of monetary penalties unless the violation “result[ed] in physical harm to a person.”

Factors to consider that might warrant stronger penalties:

- Recklessness
- Physical injury
- Property damage of over \$10,000
- Failure to pay previous civil penalties or take required corrective action
- Other factors the Advisory Committee deems appropriate

3.3 Operators

3.3.1 Penalties for Operators Who Fail to Locate or Mislocate

Pursuant to IC 8-1-26-18(h) [mislocate or failure to locate], the maximum civil penalty is \$1,000.

Initial violation	Warning letter
Second or more violation	\$1,000 or lower, considering mitigating circumstances

3.3.2 Factors to Decrease or Increase Penalties

Factors to consider that might warrant lesser penalties

- Overall level of company compliance
- Factors outside the operator’s control or difficult to control, including:
 - Broken tracer wire
 - Blocked access to the property to be located
 - Underground congestion (i.e. other types of underground facilities in vicinity)
 - Weather
 - Change in pipeline material
 - Inserted lines (where plastic gas line is pushed through an old steel line)
 - Depth of facility
 - Gas line has one or more drastic change of direction.
- Other factors the Advisory Committee deems appropriate

Factors to consider that might warrant stronger penalties:

- Recklessness
- Physical injury
- Property damage of over \$10,000
- Failure to pay previous civil penalties or take required corrective action
- Other factors the Advisory Committee deems appropriate

3.3.3 Operators Who Fail to Join the Association

Pursuant to IC 8-1-26-15(d) [failure to join association], the maximum civil penalty is \$100 per violation (one violation per day).

Initial violation	Warning letter
Failure to join within 3 months of the due date in the warning letter	\$500
Failure to join within 6 months of the due date in the warning letter	\$5,000

Failure to join within 9 months of the due date in the warning letter	\$10,000
Failure to join within 12 months of the due date in the warning letter	\$21,000
Failure to join within 15 months of the due date in the warning letter, and for each additional 3 month period	\$100 for every add'l day of noncompliance

3.4 Facility Locate Markings: Removal, Damage, or Alteration

Pursuant to IC 8-1-26-18(h) [altering facility markings], the maximum civil penalty is \$10,000.

Initial violation	Warning letter
Second violation	\$2,500 civil penalty
Third violation	\$5,000 civil penalty
Fourth and subsequent violations	\$10,000 civil penalty

3.5 False Emergency Reporting

3.5.1 Penalties

Pursuant to IC 8-1-26-19(c) [false emergency], the maximum civil penalty is \$1,000.

Initial violations	\$500 civil penalty ²
Second and subsequent violations	\$1,000 civil penalty

3.5.2 Factors to Decrease Penalties

Factors to consider that might warrant lesser penalties

- Other factors the Advisory Committee deems appropriate

² Note, per IC 8-1-26-23(j), a first-time violator who is an occupant excavator performing work on their own residential property outside an operator's easement or right of way cannot be issued a fine unless the violation resulted in physical harm to a person, as defined in IC 8-1-26.

4. Sample Case Timeline with Training Requirement

Time lapse:

6/1/21 damage occurs

6/14/21 damage reported to IURC

7/1/21 letter to excavator requesting information

8/15/21-8/15/21 staff investigates after 30-day window for excavator to send information

12/15/21 Case is heard by Advisory Committee

1/1/22 Letter to excavator giving opportunity for public hearing

2/10/22 If no request for hearing in 40 days, case is approved by IURC

2/15/22 Letter to excavator requiring training

8/15/22 Excavator must complete training within 180 days

(total time = about 14 months)

5. Training

5.1 For Excavators

Standard training (mandatory or optional) - Trained employees must include at least one attendee that is a member of management or have a supervisory role; other employees may include safety officers, excavators, or those responsible for calling in locates, scheduling work, managing the operations, or actual excavation. At least three (3) employees must be trained, unless the company has less than three (3) total employees on staff. In that case, all employees must be trained. Additional employees are encouraged to attend training, but it is not required. Respondents who utilize agents or outside contractors are encouraged to have a member of those companies attend training, but it is not required. For violations by an occupant excavator, only the violator is required to attend the training.

Additional mandatory training - If a company is required to take training more than once, the training shall include at minimum the employee that caused the damage or their supervisor if the employee is no longer with the company.

Online training – Training is available online at www.safedigindiana.com. Trained employees may include supervisors, management, safety officers, excavators, or those responsible for calling in locates, scheduling work, managing the operations, or actual excavation. Training can be accessed by desktop and laptop computers, tablets, and smart phones. All information is written and videos and animations are closed-captioned. Modules take about 15 minutes each to complete. Penalties will denote how many employees must complete the penalty and which modules must be completed.

5.2 Generally

To be “trained” means paying in full prior to the training the participant charge and any charge for a translator if required by the attendee, attending the training, and successfully passing the examination at the end of training through Baker Utility Partners. Additional vendors may be considered.