

ORIGINAL

| Commissioner | Yes | No | Not Participating |
|--------------|-----|----|-------------------|
| Huston | √ | | |
| Bennett | √ | | |
| Freeman | √ | | |
| Veleta | √ | | |
| Ziegner | | | √ |

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**IN THE MATTER OF THE COMMISSION’S INTENT)
TO AMEND ITS ORDERS RELATED TO PIPELINE)
SAFETY DIVISION CASE NOS. 25327, 28128, 27842,)
27451, 27494, 27579, 27721, 27986, 27850, 26263, 28254,)
27138, 26440, AND 27240 AND TO RESCIND ITS)
ORDERS RELATED TO PIPELINE SAFETY DIVISION)
CASE NOS. 28923, 28300, 28969, 27830, 28841, 28802,)
30167, 30149, 29276, 29769, 29353.)**

CAUSE NO. 46045

APPROVED: APR 17 2024

ORDER OF THE COMMISSION

Presiding Officers:

James F. Huston, Chairman

Ann Pagonis, Administrative Law Judge

Based upon a March 21, 2024 letter received from the Assistant General Counsel of the Indiana Utility Regulatory Commission (“Commission”) and pursuant to Ind. Code § 8-1-2-72, the Commission commences this Cause and notifies Tamahawk Services, LLC; R T Moore, Company Inc.; Dirtworx Excavating, LLC; Pages Circus; Quality Excavating Corporation; Terry Hoogenboom Builders, LLC; JPJ Concrete Construction, Inc.; Plus Ultra Construction, LLC; Roaming Networks, Inc.; Quality Concrete and Landscaping, LLC; Draper Fencing Company, LLC; Aaron’s Perfect Cut Tree Service, LLC; Lewis Property Solutions, LLC, and; B & B Pools, LLC (jointly, “Respondents I”) of the Commission’s intent to amend its Orders identified below that mandated the payment of penalties upon a failure to complete required training within 180 days of the Commission’s Order;

- Tamahawk Services, LLC, Case No. 25327, Order dated 4/6/2022
- R T Moore, Company Inc., Case No. 28128, Order dated 3/30/2023
- Dirtworx Excavating Corporation, Case No. 27842, Order dated 2/8/2023
- Pages Circus, Case No. 27451, Order dated 2/8/2023
- Quality Excavating Corporation, Case No. 27494, Order dated 1/18/2023
- Terry Hoogenboom Builders, LLC, Case No. 27579, Order dated 1/18/2023
- JPJ Concrete Construction, Inc., Case No. 27721, Order dated 2/8/2023
- Plus Ultra Construction, LLC, Case No. 27986, Order dated 2/8/2023
- Roaming Networks, Inc., Case No. 27850, Order dated 2/8/2023
- Quality Concrete and Landscaping, LLC, Case No. 26263, Order dated 8/3/2022
- Draper Fencing Company, LLC, Case No. 28254, Order dated 4/12/2023
- Aaron’s Perfect Cut Tree Service, LLC, Case No. 27138, Order dated 12/28/2022
- Lewis Property Solutions, LLC, Case No. 26440, Order dated 8/30/2022
- B & B Pools, LLC, Case No. 27240, Order dated 12/28/2022

The Commission also notifies C C T Underground, LLC; Blue Ocean Contractors; G V J Underground, LLC; Robert's Pools, Inc; Mint City Underground, LLC; Jennett Construction, LLC; Jonathan Bischoff; Lavon Zimmerman; Schmucker Construction, and; R L Johnson, LLC (jointly, "Respondents II") of the Commission's intent to rescind its Orders identified below that upheld the finding of violation by the Commission's Pipeline Safety Division ("Division") and approved the recommendation of the Underground Plant Protection Advisory Committee ("Advisory Committee"):

- C C T Underground, LLC, Case No. 28923, Order dated 8/2/2023
- Blue Ocean Contractors, Case No. 28300, Order dated 10/31/2023
- G V J Underground, LLC, Case No. 28969, Order dated 8/2/2023
- Robert's Pools, Inc, Case No. 27830, Order dated 2/23/2022
- Mint City Underground, LLC, Case No. 28841, Order dated 6/6/2023
- Jennett Construction, LLC, Case No. 28802, Order dated 6/6/2023
- Jonathan Bischoff, Case No. 30167, Order dated 3/13/2024
- Lavon Zimmerman, Case No. 30149, Order dated 1/17/2024
- C C T Underground, LLC, Case No. 29276, Order dated 10/11/2023
- Schmucker Construction, Case No. 29769, Order dated 12/20/2023
- R L Johnson, LLC, Case No. 29353, Order dated 11/8/2023

1. Commission Jurisdiction. Under Ind. Code § 8-1-26-23(k) and 170 IAC 5-5-3, the Commission has jurisdiction to uphold or reverse a finding of violation of Ind. Code ch. 8-1-26 by the Division and to approve or disapprove the penalty recommended by the Advisory Committee. The Commission also has general authority to rescind, alter, or amend any of its orders upon notice and after an opportunity to be heard. Ind. Code § 8-1-2-72. Therefore, the Commission has jurisdiction over Respondents and the subject matter of this proceeding.

2. Background and Procedural History of Cases to be Amended. The Commission issued Orders to Respondents I upholding the Division's finding of pipeline safety violations by Respondents I and approving the Advisory Committee's recommended penalty of training or an alternative civil penalty. The Commission's Order further provided that the penalty would be due if training was not completed within 180 days of the Order. Due to a variety of reasons, Respondents I each failed to complete mandated training within 180 days of the applicable Commission Order. Letter from James Surd, Assistant General Counsel, Commission, to Loraine Seyfried, Chief Administrative Law Judge, Commission (March 21, 2024) (Attachment 1). However, Respondents I have now completed training and request the Commission waive application of the civil penalty. *Id.*

3. Background and Procedural History of Cases to be Rescinded. Since the Commission issued Orders to Respondents II, Counsel for the Division and Advisory Committee has discovered material facts that differed from the information as understood by the Advisory Committee and/or Division at the time the cases were referred to the Commission. Accordingly, the Commission's General Counsel requests that the Commission rescind its Orders for the purpose of allowing the consideration of additional facts. (Attachment 1)

4. Notice of Amendment. Based upon the information submitted by the Commission's Assistant General Counsel, the Commission notifies the Division, the Advisory Committee, and Respondents I that it intends to amend the following Orders to waive the penalties imposed due to failure to complete the mandated training within 180 days of the Commission's Order:

- Tamahawk Services, LLC, Case No. 25327, Order dated 4/6/2022
- R T Moore, Company Inc., Case No. 28128, Order dated 3/30/2023
- Dirtworx Excavating Corporation, Case No. 27842, Order dated 2/8/2023
- Pages Circus, Case No. 27451, Order dated 2/8/2023
- Quality Excavating Corporation, Case No. 27494, Order dated 1/18/2023
- Terry Hoogenboom Builders, LLC, Case No. 27579, Order dated 1/18/2023
- JPJ Concrete Construction, Inc., Case No. 27721, Order dated 2/8/2023
- Plus Ultra Construction, LLC, Case No. 27986, Order dated 2/8/2023
- Roaming Networks, Inc., Case No. 27850, Order dated 2/8/2023
- Quality Concrete and Landscaping, LLC, Case No. 26263, Order dated 8/3/2022
- Draper Fencing Company, LLC, Case No. 28254, Order dated 4/12/2023
- Aaron's Perfect Cut Tree Service, LLC, Case No. 27138, Order dated 12/28/2022
- Lewis Property Solutions, LLC, Case No. 26440, Order dated 8/30/2022
- B & B Pools, LLC, Case No. 27240, Order dated 12/28/2022

If the Division, the Advisory Committee, or a Respondent has any objection to the proposed amendment, a request for hearing concerning the applicable case shall be filed under this Cause within 20 days from the date of this Order.

5. Notice of Rescission. Based upon the information submitted by the Commission's Assistant General Counsel, the Commission notifies the Division, the Advisory Committee, and Respondents II that it intends to rescind the following Orders to allow the Division and Advisory Committee to revise their findings and recommendations:

- C C T Underground, LLC, Case No. 28923, Order dated 8/2/2023
- Blue Ocean Contractors, Case No. 28300, Order dated 10/31/2023
- G V J Underground, LLC, Case No. 28969, Order dated 8/2/2023
- Robert's Pools, Inc, Case No. 27830, Order dated 2/23/2022
- Mint City Underground, LLC, Case No. 28841, Order dated 6/6/2023
- Jennett Construction, LLC, Case No. 28802, Order dated 6/6/2023
- Jonathan Bischoff, Case No. 30167, Order dated 3/13/2024
- Lavon Zimmerman, Case No. 30149, Order dated 1/17/2024
- C C T Underground, LLC, Case No. 29276, Order dated 10/11/2023
- Schmucker Construction, Case No. 29769, Order dated 12/20/2023
- R L Johnson, LLC, Case No. 29353, Order dated 11/8/2023

If the Division, the Advisory Committee, or a Respondent has any objection to the proposed rescission, a request for hearing concerning the applicable case shall be filed under this Cause within 20 days from the date of this Order.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Based upon information from the Commission’s Assistant General Counsel, the Commission intends to amend the Orders identified in Finding Paragraph 4 above to waive the penalties imposed due to failure to complete the mandated training within 180 days of the Commission’s Order. Any objection by the Division, the Advisory Committee, or Respondents I to the Commission’s amendment of an Order identified herein shall be filed under this Cause within 20 days from the date of this Order.

2. Based upon information from the Commission’s Assistant General Counsel, the Commission intends to rescind the Orders identified in Finding Paragraph 5 above to allow the Division and/or Advisory Committee to revise its findings and/or recommendations. Any objection by the Division, the Advisory Committee, or Respondents II to the Commission’s rescission of an Order identified herein shall be filed under this Cause within 20 days from the date of this Order.

3. This Order shall be effective on and after the date of its approval.

HUSTON, BENNETT, FREEMAN, AND VELETA CONCUR; ZIEGNER ABSENT:

APPROVED: APR 17 2024

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

**Dana Kosco
Secretary of the Commission**



March 21, 2024

Lorraine Seyfried, Chief Administrative Law Judge
Indiana Utility Regulatory Commission
101 W. Washington Street, Suite 1500 E
Indianapolis, Indiana 46204-3407

Re: Request to Modify or Rescind Orders Regarding Indiana 811 Law Cases

Dear Judge Seyfried:

I respectfully request that the Indiana Utility Regulatory Commission (“Commission”) modify or rescind its orders relating to specific excavation damage cases as outlined below.

In these cases, the Commission issued Final Orders upholding the findings of violations by the Commission’s Pipeline Safety Division (“Division”) and approving the recommendations of the Underground Plant Protection Advisory Committee (“UPPAC”) under Ind. Code ch. 8-1-26, the “Indiana 811 Law.”

Ind. Code § 8-1-2-72 permits the Commission “at any time” to “rescind, alter, or amend any order fixing any rate or rates, tolls, charges, or schedules, or any other order made by the commission” after notice and opportunity to be heard. The details of each of the cases and the reason for the request to modify or rescind the Final Orders are specified in the tables below.

Training Requirements Completed Late

Regarding the cases in the following table, the Commission approved mandatory training based on the penalty recommendation from the UPPAC. The Final Orders state, “Any approved trainings must be completed no later than 180 days from the date of this Order or the alternative civil penalty noted in the attached recommendation is due.”¹

The excavators subject to the mandatory training requirement have now completed the training but the training was completed after 180 days from the applicable Final Order. The guiding principle of the training requirement, as expressed in the 2022 UPPAC Penalty Schedule, is “to ensure public safety.” <https://www.in.gov/iurc/files/2021-12-15->

¹ For excavation damages occurring after January 1, 2023, the Final Orders allow 90 days from the date of the order to complete the required training. All cases in this request arise from damages prior to 2023.

[2022-FINAL-UPPAC-Penalty-Schedule.pdf](#). It further states, “[t]he focus will be to educate parties and encourage compliance, rather than being punitive.” *Id.* The Penalty Schedule does not state a timeframe to complete training.

The excavators ultimately completed the training, and although the training was completed outside of the 180-day deadline, those excavators obtained vital education that should contribute to public safety. The excavators completed the training requirement with no promise or guarantee that the (late) training they completed would be accepted by the Commission.

I recommend that the Commission investigate the matter and request that the Commission modify its previous orders to waive the penalty for failing to complete the training by the deadline. This recommendation is based on the excavator-provided reasons for training late and based on the overall goal espoused by the UPPAC that educating parties to avoid damages in the future is preferable to punitive monetary penalties.

| Division Case # | Final Order | Training Due | Training Completed | Excavator Reasoning |
|------------------------|--------------------|---------------------|---------------------------|--|
| 25327 | 04/06/2022 | 10/03/2022 | 1/17/2024 | Excavator trained for a different case, thinking it applied to this case. |
| 28128 | 03/30/2023 | 6/27/2023 | 8/1/2023 | Due to a decrease in revenue, Excavator could not pay for training within the time parameters. |
| 27842 | 02/08/2023 | 08/07/2023 | 08/09/2023 | A scheduling error with Utility Protection Trainers resulted in a two-day delay in training. |
| 27451 | 02/08/2023 | 08/07/2023 | 08/09/2023 | Respondent is a traveling circus, resulting in a slight delay in completing the training. |
| 27494 | 01/18/2023 | 07/17/2023 | 07/19/2023 | Excavator unintentionally scheduled and completed the training two days late. |
| 27579 | 01/18/2023 | 07/17/2023 | 07/19/2023 | Excavator unintentionally scheduled and completed the training two days late. |
| 27721 | 2/8/2023 | 05/09/2023 | 08/16/2023 | A serious injury resulted in a delay in completing the required training. |
| 27986 | 02/08/2023 | 05/09/2023 | 08/09/2023 | Financial constraints prevented training by the due date. |
| 27850 | 02/08/2023 | 08/07/2023 | 08/16/2023 | Due to financial hardship, the excavator could not train within the time parameters. |

| | | | | |
|-------|------------|------------|------------|--|
| 26263 | 08/03/2022 | 11/01/2022 | 01/17/2024 | A miscommunication regarding the approval of late training resulted in missing the deadline. |
| 28254 | 04/12/2023 | 07/11/2023 | 10/27/2023 | Excavator trained for a different case, thinking it applied to this case. |
| 27138 | 12/28/2022 | 03/28/2022 | 12/18/2023 | Lack of proper service resulted in a late training. |
| 26440 | 08/30/2022 | 11/27/2022 | 12/06/2023 | Excavator experienced hardship, resulting in a missed deadline and late training. |
| 27240 | 12/28/2022 | 03/28/2023 | 02/14/2024 | Excavator paid for training, however, a subsequent computer issue thwarted completion in a timely fashion. |

Requests to Rescind Final Orders

In the following cases, I request that the Commission rescind the Final Orders for the specific reason noted. In these cases, the named respondent was not the correct excavator responsible, service was attempted at an incorrect or invalid address, a second case was mistakenly initiated for the same damage, the UPPAC unintentionally recommended an incorrect penalty, or the excavator subject to training is no longer in business. For cases where the Final Order is against the incorrect excavator, the Division will search to find the correct excavator and if successful, begin a new case against that excavator. Similarly, if the address was incorrect or undeliverable, the Division will seek to ascertain a valid address and begin a new case with service to the valid address. In all of these cases, based on the evidence known now, the Commission's Final Order should be rescinded.

| Division Case No. | Final Order | Summary |
|--------------------------|--------------------|--|
| 28923 | 08/02/2023 | The named respondent was not the correct excavator responsible for the damage. |
| 28300 | 10/31/2023 | Service was attempted at an incorrect or invalid address. |
| 28969 | 08/02/2023 | Service was attempted at an incorrect or invalid address. |
| 27830 | 02/23/2022 | The excavator subject to training is no longer in business |
| 28841 | 06/06/2023 | A second case was mistakenly initiated for the same damage. |
| 28802 | 06/06/2023 | Service was attempted at an incorrect or invalid address. |
| 30167 | 03/13/2024 | The named respondent was not the correct excavator responsible for the damage. |

| | | |
|-------|------------|--|
| 30149 | 01/17/2024 | The named respondent was not the correct excavator responsible for the damage. |
| 29276 | 10/11/2023 | The named respondent was not the correct excavator responsible for the damage. |
| 29769 | 12/20/2023 | The named respondent was not the correct excavator responsible for the damage. |
| 29353 | 11/08/2023 | The named respondent was not the correct excavator responsible for the damage. |

Please contact me if you have any questions or if you need additional information.

Sincerely,
James Surd
Assistant General Counsel
Indiana Utility Regulatory Commission