

# Non-Compliance

In violation of 761 IAC 115

## Flowchart Narrative

This narrative explains each of the steps displayed on the **Non-Compliance Process** Flowchart. The paragraphs are numbered to correspond to the numbers shown in each process or decision step in the chart.

This chart is to be used where it's been discovered that a utility company is in non-compliance with 761 IAC 115 but the non-compliance, if DOT project related, has not resulted in stopping construction for the DOT contractor. The non-compliance could be related to non-responsiveness or improper procedures related to permitting.

Number	Title	Narrative	CC List
1	District (DUC/EOT)	The district representative determines that a non-compliance has occurred. Is the non-compliance independent from a DOT construction project? If no, proceed to box 2. Otherwise, proceed to box 4.	-
2		If the DOT contractor cannot continue due to the non-compliance resulting in a utility facility conflict or it will come to a point when the utility facility conflict stops the work, proceed to box 3.	-
3		Proceed to <i>conflict resolution process/flowchart</i> (box 2).	-
4	Notify Utility Program Director	<p>The DUC/EOT will notify the UPD upon the discovery of any non-compliant utility that requires the resolution process. This process may be adjusted depending on the situation which should be evaluated on a case-by-case basis for the proper steps forward.</p> <p>For non-compliance related to utility coordination...(DUC handles)</p> <p>For non-compliance related to permitting...(EOT handles)</p> <p>The notification should include the name of the utility company and description of the non-compliance.</p> <p>The DUC/EOT will call the utility company contact and request a resolution within # days. (Default # days is 3) The phone call will be followed up with written notification of non-compliance to utility company. Proceed to box 5.</p>	ABC
5	Plan in # days?	Did the utility company provide a reasonable resolution within # days? If yes, proceed to box 6. If no, proceed to box 21.	-
6	District review of resolution within # days.	District staff will review the utility company's resolution within # days. At a minimum, the DUC/EOT and will review. Proceed to box 7.	-
7	Is the resolution acceptable?	A written response from the utility company (email is acceptable) is required within the # days, in addition to any verbal communications. If not approved, an email notice to the utility company should provide exact requirements to become approved. If approved proceed to box 8. If not approved, proceed to box 20.	-

8	Does the non-compliance result in an obstruction in the ROW?	If yes, proceed to box 10. If no obstruction was created and the DUC/EOT approve of resolution, proceed to box 9.	-
9	DUC sends concurrence to utility company	DUC sends concurrence to utility company with notice to proceed with resolution within # days. Proceed to box 13.	ABC
10	Was this a legally permitted utility facility occupancy?	EOT and DUC to determine: Was this utility facility legally occupying DOT ROW under a valid current permit? If yes, proceed to box 12. If no, proceed to box 11. Examples of not legally permitted: Installed without a permit Installed in wrong location Installed utility/type doesn't match permit (including OH vs. UG)	-
12	DUC sends permit revocation to Utility Company	DUC will send utility company notification of permit revocation with notice to remove obstruction with # days. Proceed to box 13.	ABC
13	Does the resolution plan require a new utility permit?	DUC/EOT to determine. If yes, proceed to box 14. If no, proceed to box 18.	
14	Utility requests permit	Utility company requests new permit through EPS. EOT is notified by EPS upon successful submission. EOT will review and process request as appropriate. Proceed to box 15.	
15	Is the permit request acceptable?	EOT will review the request and issue permit if complete and acceptable. If yes, proceed to box 17. If no, proceed to box 16.	
16	EOT sends permit back to utility company for additional info	Utility provides additional information through EPS or email if necessary. EOT completes the review of the permit. This process repeats until the permit is issued or cancelled. If cancelled the request process will need to be repeated. Return to box 14.	
17	EOT issues permit	When the permit request has been fully approved the EOT issues the permit through EPS. Proceed to box 18.	
18	Utility proceeds with resolution within # days	After receiving the issued permit, the utility company may proceed with their planned work. Proceed to box 19.	
19	Was the resolution successful?	The DUC/EOT reviews the work performed by the utility and determines if the resolution was success and if the utility is now in compliance. If yes, proceed to box 21. If no, go to box 20.	
20	DUC sends resolution back to utility for revision within # days	DUC informs utility that the resolution is/was not successful, and the utility is still in non-compliance and gives the utility # days to resolve the non-compliance. This process may repeat more than once. If the utility is non-responsive or if a resolution can't be reached (repeats more than once), the DUC and district staff should consult with the Utility Program Director on the criticality of the situation to determine if escalation to General Counsel is necessary and if permits should be suspended. To repeat the process,	ABC

		proceed to box 5. To escalate the process, proceed to box 22.	
21	Non-compliance resolved	DUC notifies utility company that non-compliance is considered resolved and informs utility company that they should meet with Utility Program Director and DUC to discuss future (how they can keep in compliance and avoid permit cessation). Proceed to box 24.	ABCD
22	ESCALATION Has the obstruction (if any) been removed by the utility?	If the utility is non-responsive, if a resolution cannot be reached, or an obstruction remains that the utility company is not resolving, then the situation may need to be ESCALATED. The DUC and district should meet with the Utility Program Director to determine the steps necessary including permit cessation, removal of the obstruction, or other legal action. If permit issuance is being halted, proceed to box 23. If resolution performed, proceed to box 19.	
23	DOT issues stop order and halts all permit processing by utility company for entire state.	DUC sends notice of noncompliance to utility company stopping all in-process and future utility permits for this company for the entire state. Return to box 22 until resolution is reached.	ABCD
24	Did utility company meet with UPD and DUC to discuss future?	If yes, proceed to box 25.	
25	Stop order, if any, is lifted, resume permitting	Was a satisfactory path forward agreed upon by utility company, Utility Program Director and the DUC? If so, the DUC sends notice to utility company, lifting the Stop Order and resuming utility permitting statewide.	ABCD