

# **Procedural Guidelines for Enforcement of Pipeline Safety Standards\***

(Revised as of January 3, 2022)  
(Effective January 28, 2022)

## **I. Inspection**

- A. Inspections are performed by the State Corporation Commission's ("Commission") Division of Utility and Railroad Safety ("Division"). When an inspection of an operator's records, facilities, construction, etc., (including investigations of reported incidents) reveals that the operator may be in probable violation of the Pipeline Safety Standards as adopted by the Commission, the inspector will deliver informal notification thereof to the operator orally, electronically, or in writing.
- B. If a probable violation is considered by the inspector to represent an immediate danger to life, health, or property, the operator will be asked to take immediate corrective actions.
- C. During or following an inspection, the inspector may request, and the operator may provide, documents or other evidence relating to an alleged violation of the Commission's Pipeline Safety Standards.

## **II. Formal Notice of Investigation**

- A. When an inspection reveals that one or more probable violations of the Commission's Pipeline Safety Standards may have occurred, the Division shall deliver a formal Notice of Investigation ("NOI") to the operator.
- B. An NOI shall include the date(s) and location(s) of the inspection, a description of the findings, and the regulations and/or statutory codes that the operator is alleged to have violated.

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\* These internal guidelines have been developed, and can be modified, by the Commission and re-posted from time-to-time by the Division. These internal guidelines do not alter an operator's obligation to comply with all applicable state and federal laws and regulations.

- C. An NOI will also specify a date on or before which the operator may deliver to the Division a written response to the NOI, which may include additional or new information.
- D. The issuance of an NOI shall not preclude the issuance of a subsequent NOI noticing additional violations arising from the same incident, should newly-discovered information merit such action. The operator shall have the same opportunity to address any new violations as permitted in Part II C.
- E. Following further review, the Commission's Office of General Counsel ("OGC"), in consultation with the Division, shall determine whether enforcement action is appropriate for the probable violation(s). OGC shall then determine the nature and scope of enforcement action, if any, and the operator shall be so informed in writing.<sup>1</sup> Enforcement actions may include, but are not limited to, Warning Letters, Notices of Amendment, Notices of Probable Violation, and requests for a Rule to Show Cause.
- F. In addition, where an inspection reveals a potential threat or risk to public safety, and no specific violation of the Commission's Pipeline Safety Standards appears to have occurred, the Division may issue a formal Letter of Concern to the operator, either instead of, or after an NOI.

### **III. Warning Letter**

- A. A Warning Letter ("WL") is used to formally notify a jurisdictional entity or operator of circumstances that were, or are, not in compliance with the Commission's Pipeline Safety Standards and other applicable statutes, waivers, permits, or other authority enforced by the Commission.

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<sup>1</sup> If the operator is a private corporation, written notice shall be sent to the highest ranking company officer, or another company officer if so designated by the company.

- B. A WL is generally used when the totality of circumstances, in the opinion of OGC, does not call for further Division action or Commission review.

#### **IV. Notice of Amendment**

- A. A Notice of Amendment ("NOA") is used to formally notify a jurisdictional entity or operator that the Division has identified specific inadequacies, relative to the minimum requirements of the Commission's Pipeline Safety Standards, in the jurisdictional entity or operator's plans or procedures, and advises the jurisdictional entity or operator to correct them.
- B. If a jurisdictional entity or operator declines to respond within the time noted in an NOA or if a jurisdictional entity or operator declines to revise its procedures, OGC may pursue further enforcement action.

#### **V. Notice of Probable Violation**

- A. If OGC determines that a Notice of Probable Violation ("NOPV") should be issued, the written NOPV will be delivered to the operator (by certified letter or other form of communication mutually acceptable to OGC and the operator) and clearly designated "Notice of Probable Violation."
- B. The NOPV will describe the inspection results and specify the regulations and/or statutory codes that the operator is alleged to have violated.
- C. The NOPV will be accompanied by a draft Settlement Order outlining settlement terms OGC, after consultation with the Division, proposes to recommend for the Commission's consideration. The settlement terms may include provisions for civil penalties and/or remedial actions.
- D. Any civil penalty included in a draft Settlement Order will be limited to the requirements set forth in Code § 56-257.2 and the federal Pipeline Safety Act.

- E. The NOPV will describe the response options available to the operator by specified dates, which options may include: (i) agreement to the settlement terms contained in the draft Settlement Order; (ii) requesting a settlement meeting with OGC and the Division; and (iii) submitting a written reply disputing the probable violations in the NOPV.

## **VI. Results from NOPV**

- A. If the operator fails to respond in accordance with the provisions of the NOPV, OGC may recommend that the Commission issue a Rule to Show Cause against the operator.
- B. If the operator chooses a settlement meeting, OGC and the Division shall attend. Either the operator or OGC may request that such meeting be conducted by a settlement officer designated by the Commission. OGC shall have the authority to agree to a settlement, after consultation with the Division.
- C. If a settlement is reached, OGC will submit the proposed Settlement Order, along with any relevant attachments, to the Commission for its consideration. The final decision to accept or modify a proposed settlement is made by the Commission.
- D. If no settlement is reached, OGC may present the matter to the Commission for formal action, which may include issuance of a Rule to Show Cause directing the operator to show cause why it should not be penalized on account of the alleged probable violations.

## **VII. Injunctions**

- A. Whenever the Division finds a particular pipeline facility to be hazardous to health, life, or property, OGC may, pursuant to Code § 12.1-13, request that the Commission temporarily enjoin the operation of the facility until specific corrective action has been taken.
- B. Following the issuance of a temporary injunction, a hearing may be scheduled, as soon as possible, to determine if the injunction should be made permanent.