

Indiana Utility Regulatory Commission

Expectations and Enforcement





Overview



Overview

- **Authority and Jurisdiction**
- **Inspection Responsibilities**
- **Non-compliance**
- **Escalated Enforcement**
- **Enforcement Priorities**
- **Recent Enforcement Actions**



Authority and Jurisdiction



Authority

- **Indiana Code 8-1-22.5-2 established the Pipeline Safety Division within the IURC and charged it with the regulation of transportation and related pipeline facilities and their operation in order to promote public safety.**
- **Indiana Code 8-1-22.5-4 states the division, acting through the commission shall administer and require compliance with federal pipeline safety standards.**



Jurisdictional Natural Gas Operators

STATE JURISDICTION AND AGENT STATUS OVER GAS FACILITIES AS OF DECEMBER 31, 2017

Operator Type	State Agency Jurisdiction/ Agent Status		No. of Operators	Operators Inspected		No. of Inspection Units	Units Inspected	
	No ¹	Yes		#	%		#	%
Distribution								
Private		X/60105	18	9	50.0%	47	23	48.9%
Municipal		X/60105	18	13	72.2%	18	13	72.2%
Master Meter		X/60105	35	22	62.9%	79	34	43.0%
LPG		X/60105	0	0	N/A	0	0	N/A
Other		X/60105	0	0	N/A	0	0	N/A
Transmission								
Intrastate		X/60105	16	10	62.5%	29	20	69.0%
Interstate	F		0	0	N/A	0	0	N/A
LNG								
Intrastate		X/60105	2	2	100.0%	3	3	100.0%
Interstate	F		0	0	N/A	0	0	N/A
Other								
Gathering Lines		X/60105	1	1	100.0%	1	1	100.0%
Offshore Facilities		X/60105	0	0	N/A	0	0	N/A
Total			90	57	63.3%	177	94	53.1%



Inspection Responsibilities



Inspection Areas

- **Damage Prevention**
- **Corrosion Protection**
- **Operator Qualification and Training**
- **O&M Records and Procedures**
- **System Design and Construction**
- **Integrity Management**
- **Pressure Regulation**
- **Emergency Response**
- **Drug and Alcohol Compliance Program**
- **Public Awareness**
- **Incident Reporting and Investigation**
- **Control Room Management**
- **Reporting and Documentation**



Federal Guideline Inspection Requirements

In addition to following all of PHMSA's state program guidelines which include operating procedures, record keeping, reporting, staffing levels and staffing qualifications, PHMSA also requires State PS Programs to complete all required inspections at least once every five years for each inspection unit of each operator.



How are Inspections Scheduled

The Pipeline Safety Division maintains a data driven, risk-based model which it uses to prioritize inspections based on relative risk. The following criteria factor into this model:

- Excavation damages per 1,000 tickets
- Corrosion leaks per mile mains and services
- Age of system
- Violations / Repeat violations
- Time since last inspection
- System size, e.g. miles of main and number of services
- OQ program
- HCA's / Population density
- Key personnel changes
- "Other" Division concerns



Non-compliance



When areas of Non-compliance are found

- **Violations**
 - When probable violations are identified during an inspection they must be communicated in writing to the operator within 90 days.
 - In 2017, of the 960 inspection days completed covering 57 operators and 94 inspection units, the Division found 270 probable violations.
- **Our goal is to work with each operator to bring them into compliance without additional legal measures being taken.**



Enforcement Tools

Primary Tools

- Warning Letters
- Letters Regarding Areas of Concern
 - Notices of Probable Violations
 - Notices of Amendment

Escalated Enforcement Action Tools

(Requires Commission Order)

- Notices of Recommended Penalties
- Hazardous Condition Orders (Corrective Action)



Escalated Enforcement



Triggering Events or Circumstances Leading to Escalated Enforcement

- **A violation that results in or contributes to the seriousness of an incident with one of the following:**
 - A fatality
 - An injury requiring overnight hospitalization
 - \$50,000 or more in property damage
- **A repeat violation that poses a significant safety risk**
- **A violation related to falsification of records or fraud**
- **A repeat or continued violation the operator refuses to address**



Civil Penalties

- **Civil Penalties – last choice for enforcement**
 - Commission can assess \$25,000 penalty per violation for each day that the violation persists, up to \$1 million. Ind. Code ch. 8-1-22.5 (federal maximum is \$200,000/\$2 Million)
 - Enforcement cases are formally docketed proceedings before a Commission administrative law judge
 - The Pipeline Safety Division and the gas operator testify at an evidentiary hearing and are subject to cross-examination.
 - The case concludes with an order issued by a majority of the Commissioners



Civil Penalty Determination

- **The Division has developed a set of internal deliberative guidance materials which it uses to help determine appropriate levels of civil penalties to be sought when such an enforcement action is most appropriate. Civil penalty amounts are based on the nature of the violation and other operator specific information.**
- **This guidance incorporates penalty considerations from the following slide and helps to ensure consistency while providing additional support and objectivity for penalties sought.**



Penalty Considerations

If civil penalties are determined to be the most appropriate enforcement approach necessary to effectively influence operator behavior, the following are factors considered in determining the amount of the recommended penalty:

- Gravity of violation (Damages, personal injuries or death)
- Seriousness of violation (Potential impact on public health and safety)
- Culpability (intentional, negligent, reckless or egregious)
- Violation history (repeat violations more heavily weighted)
- Level of cooperation
- Economic advantage (financial impact related to noncompliance)
- Ability to pay



Municipal Operators and Housing Authorities

Because of the potential for unwanted or unintended consequences related to escalated enforcement actions with municipal pipeline operators and master meter operators who are also Public Housing Authorities, the division may need to take additional steps to ensure compliance with these operators.

In such cases, in addition to the required notifications prescribed by PHMSA, the division with the assistance of External Affairs and the Office of General Counsel, will also contact the appropriate local government leadership (City Mayors, Town Boards or Town Councils, etc.) or the Indiana Housing and Community Development Authority to seek their help in finding solutions to achieve compliance.



Enforcement Priorities



Enforcement Priorities

- While operator compliance with all pipeline safety standards is expected and will be enforced, the Pipeline Safety Division is particularly intent on ensuring compliance in the following areas due to elevated risks:
 - Damage Prevention
 - Operator Qualification
 - Corrosion
- The Division desires to work with operators to achieve compliance, not impose civil penalties.



Enforcement Priorities – Damage Prevention

- **Damage prevention and operator locate performance has been one of the highest priorities of the Division over the last several years. The following issues have come under greater scrutiny:**
 - **Failure to accurately and timely locate facilities (accounts for roughly one-third of pipeline damages in Indiana)**
 - **On-time locating performance (becomes increasingly difficult as the number of tickets continue to rise year over year)**
 - **Accurate maps and records (locator's access to accurate and up-to-date maps and records are an important priority and are essential for accurate locating)**



Locate timeliness Legal Mechanism for Penalty Enforcement

- State statute requires the Pipeline Safety Division to require compliance with minimum pipeline safety standards
- 49 CFR 192.605, adopted into state law through 170 IAC 5-3-0.6 and 170 IAC 5-3-2(1), generally requires pipeline operators to prepare and follow for each pipeline a manual of written procedures for conducting operations and maintenance activities.
- Each operator includes in its written procedures that it will comply with the Indiana one call law



Locate accuracy – Legal Mechanism for Penalties Related to Maps and Records

- **Indiana specific law – an addition to federal minimum pipeline safety standards (170 IAC 5-3-2(10)):**
 - *“Each operator shall maintain a system of records of its physical plant. These shall include records and maps of its active physical plant in use, and be in a form as to facilitate the operation and maintenance of the plant in a safe manner.”*
- **PSD normally is made aware of inaccurate maps and records only when operators self-report them as the root cause of an excavation damage. PSD typically does not know of maps and records issues absent a damage.**



Recent Enforcement Actions



Review of Recent Enforcement Actions

- **Indiana Utility Regulatory Commission Approved Settlement Agreement between the Pipeline Safety Division and a Gas Operator on November 30, 2017**
- **Previous settlement with same operator, with \$75,000 in penalties back in 2013.**



Review of Recent Enforcement Actions (cont.)

- **The Commission imposed penalties for failure to locate facilities within two working days and for inaccuracies in maps and records:**
 - **Locate timeliness**
 - 208 violations all resulting in damages
 - **Maps and Records accuracy**
 - 53 violations all resulting in damages



Review of Recent Enforcement Action (cont.)

- **Prospective Penalty Schedule for 2018 and 2019 violations (this is in addition to penalties recommended by the UPPAC).**

At Fault Damages per Year	Civil Penalty per Damage
First 25	\$2,500
26-50	\$3,000
50-75	\$4,000
76-100	\$4,500
100-150	\$5,000
151-200	\$6,000
Greater than 200	\$7,000

- **Penalties collected are deposited into the Indiana state general fund.**



Review of Recent Enforcement Action (cont.)

- **Pipeline Safety Division filed another Settlement Agreement still pending Commission Approval**
- **Settlement Agreement again included fines for late locates, instituting the same penalty schedule from the previous slide**



Review of Recent Enforcement Actions (cont.)

- In both cases – the Pipeline Safety Division established formal metrics reporting
 - Operators have typically provided requested data when asked, but no formalized reporting process existed
 - Performance Metrics established in order include:
 - Number of project locates
 - Number of project and non-project requests not marked within 2 working days
 - Damages resulting from inaccurate and late locates
 - Root causes for damages
 - Customer outages caused by damages



Review of Recent Enforcement Action (cont.)

- In both enforcement cases, the Pipeline Safety Division reviewed and/or required the operator's implementation of API RP-1173 PSMS and safety culture assessment





Questions?



Indiana Utility Regulatory Commission

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