

**Operating Practices
of the
Maryland Underground Facilities Damage Prevention Authority
("The Authority")**

NPV Procedures 3.1

1. Upon receipt of a Notice of Probable Violation (NPV) from the complainant, the Authority verifies the contact and incident information contained in the on-line submittal for sufficiency and accuracy and then notifies the probable violator via Notice of Investigation (NOI) and the complainant via Notice of Receipt (NOR) by regular US mail. The probable violator is encouraged to contact the Authority upon receiving the NOI letter in order to provide additional information.

2. The Executive Director shall complete a thorough and comprehensive investigation of the facts surrounding the NPV. The Executive Director shall determine whether he believes a violation of Subtitle 1 of Title 12 of the Maryland Public Utilities Article has occurred and a penalty is due based on such investigation. In its March 28, 2016 decision in *Reliable Contracting v. Maryland Underground Facilities Damage Prevention Authority* upholding the constitutionality of the Authority, the Maryland Court of Appeal directed the Authority to use the following three factors to determine the amount of any penalty assessed by the Authority: a) seriousness of the violation, b) intent ("good faith") of the violator, c) past history of violations. The Authority used these factors to create a Standardized Fining Matrix ("SFM"). The Executive Director shall use the SFM to determine the amount of the penalty to recommend to the Authority.

3. The Executive Director shall then present the entire review of the NPV together with all supporting documentation and the SFM calculations to the Authority at its next regularly scheduled closed meeting. At the closed meeting, the Authority will
 - a) decide that a civil penalty and/or training be imposed after the probable violator is notified and given the opportunity to attend a hearing, (b) request additional investigation to acquire more information and documentation for further review of the NPV before making a decision, or (c) dismiss the NPV for (i) lack of documented violation, (ii) lack of documented probable violator, (iii) lack of sufficient evidence and documentation to proceed with any further investigation or
 - (iv) any reason the Authority may deem reasonable for not proceeding with any further investigation or review of the NPV.

4. If the Authority determines that a civil penalty and/or training be imposed after the review, the Executive Director will notify the probable violator by certified and first class mail sent to the address of the probable violator on the records of the Authority or, if an entity, to the address on the records of the Maryland State Department of Assessments and Taxation of (a) establishment of the Authority and its legislative intent and authority, (b) details of the NPV as outlined in the initial submission by the complainant, (c) research of the Authority, (d) possible effects of §12-135 of the Maryland Public Utilities Article, (e) probable violator's rights, remedies and options, and (f) existence of Maryland's Administrative Procedure Act (APA) and how it impacts the hearing process. The notice shall request that the probable violator contact the Authority within thirty (30) days of the date of the notice.
5. If the probable violator does not respond to the Authority's letter within thirty (30) days, the Executive Director shall send a second letter using the process set forth in section 4. This notice may also be delivered by process server.
6. If the probable violator responds to either the first or second letter, a settlement may be reached pursuant to which the amount of the penalty initially determined may be reduced.
7. If the probable violator does not respond within thirty (30) days of the second letter, the Executive Director shall bring the issue back to the Authority at its next regularly scheduled meeting, at which time the Authority shall assign a hearing date for the NPV. The probable violator shall be notified of the hearing date using the process described in section 4 and section 5. The Authority may subpoena witnesses.
8. On the date of the hearing, the Executive Director shall present the evidence of the violation. The probable violator shall have the opportunity to submit evidence and present a defense. All testimony shall be given under oath and the proceedings shall be recorded. If the probable violator fails to appear, that fact shall be noted.
After the hearing, the Authority shall meet in closed Executive Session and determine whether A) a penalty should be assessed against the probable violator and B) if the penalty should be assessed, the amount of such penalty, using the SFM. The Authority may determine that instead of or in addition to a penalty, it will require the probable violator to participate in damage prevention training. The Authority shall issue a decision in writing, stating the reason for its decision.
9. The Executive Director shall send a copy of the written decision of the Authority to the probable violator by certified and first-class mail and shall notify the probable violator of the right of any person aggrieved by a decision of the Authority to request judicial review by the Circuit Court for Anne Arundel County, Maryland within thirty (30) days after receiving the decision.

Should the probable violator miss the 30-day deadline within which the violator must seek judicial review, a second letter will be sent by both certified and first-class mail notifying the probable violator that it has lost its right to appeal to the Circuit Court. (Note: If at any time during these time frames, the Authority receives payment for the civil fine and notification of participation in Title XII training, the case will be closed).

10. If there is still no response from the probable violator, the case may be sent for collection. In addition to collection action, any probable violator who does not fulfill any of the requirements set down by the Authority, will be placed in a Closed/Incomplete Status, which can be used as evidence when applying SFM standards in any future probable violation hearing before the Authority. In addition, any company placed in the Closed/Incomplete status will have their company name, county of operation and the reason for being placed in the Closed/Incomplete status published on the Authority website under Companies "not in good standing" with the Authority.