

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

NPV Procedures 3.2

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 they believe 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 Appeals 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 Executive Session. At that meeting, the Authority will decide whether a civil penalty and/or training should be imposed, or any other type of requirement that is indicated. Or the Authority may: (a) request additional investigation to acquire more information and documentation for further review of the NPV before making a decision, or (b) 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 (c) 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 or other requirement should be imposed after the official review, the Executive Director shall notify the probable violator by certified mail using the best possible address information. The Post Review Recommendation letter shall include the possible effects of §12-135 of the Maryland Public Utilities Article, which include the probable violator's rights, remedies and options, and the Maryland's Administrative Procedure Act (APA) and how it impacts the Authority's hearing process. The notice shall request that the probable violator contact the Authority within forty-five (45) days of the date of the notice and offer the violator the opportunity to pay their fine and undertake damage prevention training or request a hearing.
5. If the probable violator does not respond to the Authority's Post Review Recommendation letter, the Executive Director will send a second letter. This notice may also be delivered by process server. If the probable violator does not respond within forty-five (45) days of the second letter, the Executive Director will bring the NPV back to the Authority at an appropriate time in order to determine if a formal hearing should be called. If the Authority agrees to conduct a formal hearing, the Executive Director will assign a hearing date for the NPV and contact the violator regarding the hearing date by Certified mail. The Authority may also subpoena witnesses to attend the hearing.
6. On the date of the hearing, the Executive Director shall present the official evidence regarding the probable 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, and the hearing shall proceed. The Authority may assess a fine of \$200 for failure to appear.
7. After the hearing, the Authority shall meet in closed Executive Session in order to 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.
8. The Executive Director will send a copy of the written decision of the Authority to the probable violator by certified mail and shall notify the probable violator of the right of any person aggrieved by a decision of the Authority to request a judicial review by the Circuit Court for Anne Arundel County, Maryland within forty-five (45) days after receiving the decision. (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).

9. Any probable violator who does not fulfill each of the requirements set down by the Authority, will be placed in a Closed/Incomplete Status. The Authority has the ability to use the information contained in that Closed/Incomplete NPV as evidence when applying SFM standards in any future probable violations committed by this person up to three (3) years after the original violation. In addition, any company placed in the Closed/Incomplete status will have the name of their company, county of their business and the reason for being placed in the Closed/Incomplete status. This information will be posted as a company "Not in Good Standing" with the Authority on the Authority website for a period of three (3) years.

10. If the alleged violator has still not contacted the Authority regarding their case, and after the Authority has exhausted all means allowable in the Title XII statute, the Authority may forward the case to a Collection Agency in order to attempt to recoup any fines assessed as a result of this violation of the statute.