

PHMSA Enforcement History 2020-2023

Railroad Commission of Texas Regulatory Conference
Wednesday, July 31, 2024
Austin, Texas

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Purpose

- This presentation will review the PHMSA Enforcement History for calendar years 2020 through 2023. Enforcement penalties and actions will be ranked and reviewed by regulatory code section for the largest civil penalties imposed during the years covered.
- This presentation is dedicated to developing additional insight into potential regulatory deficiencies and practical operations and maintenance solutions to enhance pipeline integrity and safety while reducing regulatory non-compliance exposure.



Outline

- PHMSA Authority and Sanctions
- Significant Civil Penalties
- Common Citations
- How to Improve Internal Pipeline Safety Inspections



PHMSA Civil Authority and Sanctions

Enforcement Actions That Allege a Requirement Was Not Satisfied

- Warning Letter (§190.205, no civil penalty)
- Notice of Amendment (§190.206, no civil penalty)
- Notice of Probable Violation (§190.207, usually includes one or more civil penalties)
- Compliance Order (§190.217, may or may not include civil penalties)



PHMSA Civil Authority and Sanctions

Other Enforcement Actions

- Letter of Concern (informal, not in Part 190, no civil penalty)
- Corrective Action Order (§190.233; hearing; risk to public safety, property, or the environment; FIX IT!!)
- Safety Order (§190.239; slightly less urgent than a CAO, hearing; risk to public safety, property, or the environment; FIX IT!!)
- Emergency Order (§190.236; imminent hazard; usually a complete shutdown & investigation; lots of strings attached; need permission to re-start)



PHMSA Criminal Authority and Sanctions

- It is a federal crime for any person to “knowingly” and “willfully” conspire to commit any offense against a federal agency or to willfully and knowingly interfere with or intimidate a pipeline inspector or other PHMSA employee in the performance of his or her official duties.
- Knowing = aware of actions, not necessarily that actions are non-compliant
- Willful = actions are voluntary and deliberate, not accidental or simply negligent
- PHMSA may refer suspected criminal activity to the DOT Office of Inspector General (OIG) but this rarely happens.



False Statements – 18 USC §1001

Anyone who knowingly and willfully –

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

Up to 8 years in jail!!

Do NOT play games with inspectors and forms.



SCOTUS Ruling

- The US Supreme Court struck down “Agency Deference” on June 28.
- Federal agencies no longer have free rein to unilaterally interpret ambiguities in the statutes they administer.
- This ruling could impact PHMSA jurisdiction/authority but it may take years.



PHMSA Civil Penalty Calculations

- Nature
- Circumstances
- Gravity
- Culpability
- Prior Offenses
- Good Faith
- Other Matters as Justice May Require
- Economic Benefit
- Ability to Continue in Business

Penalty Multipliers are assigned in the event of:

- Unintended release of product
- Reportable accidents / incidents
- Hospitalization(s)
- Fatalities



Civil Penalty Reductions

- Operators may provide additional evidence to push back on proposed Civil Penalties.
- PHMSA proposed \$36,906,914 in Civil Penalties (164 enforcement actions) and ultimately assessed \$31,100,274.
- Operators effectively argued for reduced Civil Penalties for 16 of the 164 enforcements that proposed civil penalties – a success rate of just under 10%



Enforcement Action Response Considerations

- If you receive a Notice of Probable Violation (NOPV) request the Case File and Civil Penalty calculation
- Adhere to response requirements
- Pick Your battles
- Remember the public domain



Objective 1

Identify and review the pipeline safety regulations that resulted in the largest civil penalties imposed by PHMSA over the last four calendar years.

This review is intended to assist the audience in developing a more in-depth understanding of the potential impact to the safe operation of the pipeline and the impact of regulatory non-compliance.

The next several slides will cover the seven (7) largest civil penalties assessed by PHMSA between 2020-2023.



Procedure Effectiveness

- **\$2,186,465.00 Civil Penalty**
- **Fatality**

- § 192.605(b)(13)
- Failed to performance effectiveness reviews on procedures used during pig retrieval



Required Notifications and HCAs

- **\$1,935,300**
- § 195.401 - *General requirements*
- Failed to make immediate notification of a pipeline rupture despite having information available to verify the leak.

- **\$764,400**
- **31,405 barrels of CO₂ released**
- § 195.452(f) – *Pipeline Integrity Management in HCAs*
- Failed to conduct a risk analysis of its pipeline to identify additional actions to enhance public safety or environmental protection



O&M and Control Room Management

- **\$1,526,800**
- § 195.402(a) - *Procedural manual for operations, maintenance, and emergencies.*
- During a Failure, failed to follow written procedures.

- **\$1,228,900**
- **558 barrels of crude oil released**
- § 195.446(a) – *Control Room Management*
- Failed to follow CRM Plan.



Pipeline Integrity Management in HCAs

- **\$1,400,000**
- **11,0000 barrels of gasoline released**
- § 195.452 - *Pipeline integrity management in high consequence areas*
- Failed to periodically evaluate the integrity of each pipeline segment by analyzing all available information about the integrity of the entire pipeline and the consequences of a failure
- Resulted in a pipeline rupture



Control Room Management

- **\$842,900**
- **Nation-wide fuel impact**
- § 195.446(c)(3) – *Control Room Management*
- Failed to test and verify its internal communication plan to provide adequate means for manual operation of the pipeline
- Failure to test and verify the internal communication plan required the immediate shutdown of the entire pipeline system



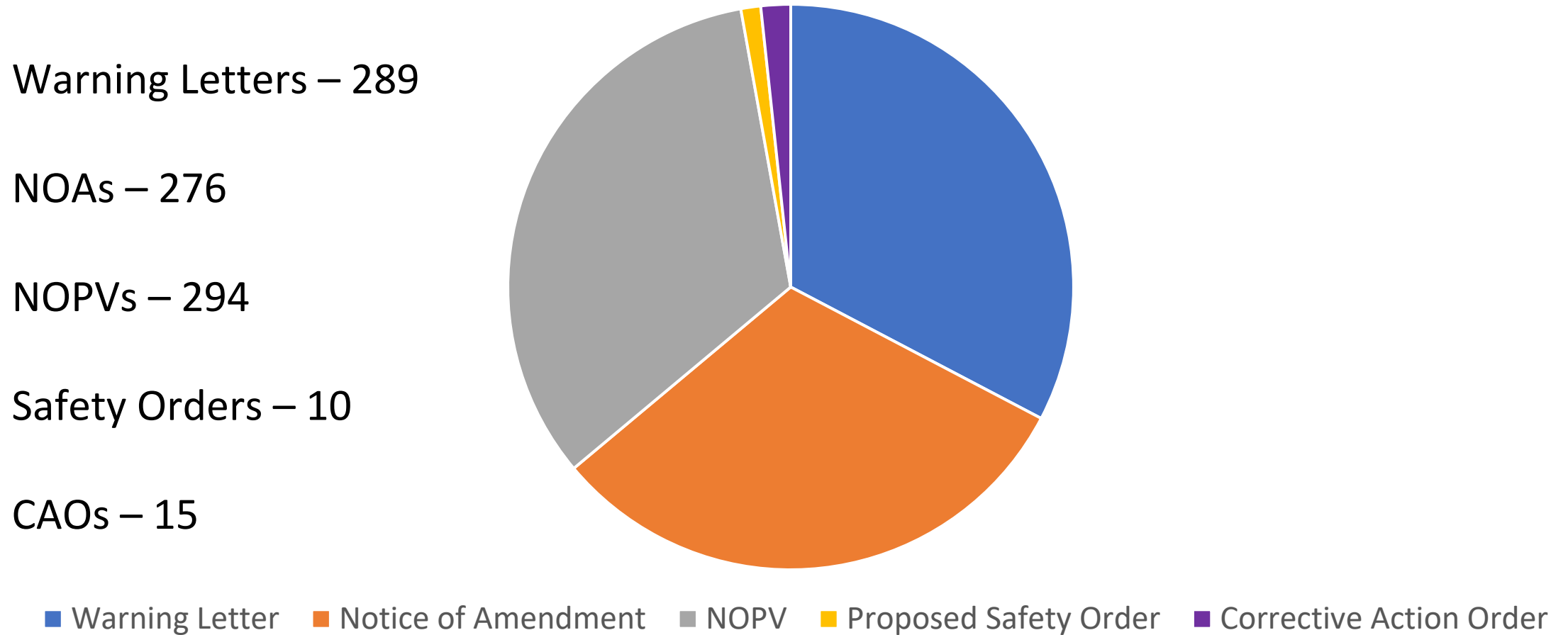
Objective 2

Identify and review the regulatory code sections most often resulting in enforcement actions (with or without civil penalties) over the last four calendar years.

This review is intended to assist the audience in developing a more in-depth understanding of the potential impact to the safe operation of the pipeline and the impact of regulatory non-compliance.



All Enforcements Issued 2020-2023



2020 High-Level Status Overview

	Cases Initiated	Cases Closed	Findings	Avg. Days to Closure	Proposed Civil Penalties	Assessed Civil Penalties
Warning Letter (WL)	66	66	168	N/A	-	-
Notice of Amendment (NOA)	68	68	242	131	-	-
Notice of Probable Violation (NOPV)	57	49	182	270	\$3,780,321	\$3,333,450
Proposed Safety Order (PSO)	1	0	N/A	-	-	-
Corrective Action Order (CAO)	3	1	N/A	412	-	-



2021 High-Level Status Overview

	Cases Initiated	Cases Closed	Findings	Avg. Days to Closure	Proposed Civil Penalties	Assessed Civil Penalties
Warning Letter (WL)	91	91	240	N/A	-	-
Notice of Amendment (NOA)	86	84	388	84	-	-
Notice of Probable Violation (NOPV)	78	75	306	305	\$9,419,230	\$7,597,306
Proposed Safety Order (PSO)	3	1	N/A	873	-	-
Corrective Action Order (CAO)	6	4	N/A	783	-	-



2022 High-Level Status Overview

	Cases Initiated	Cases Closed	Findings	Avg. Days to Closure	Proposed Civil Penalties	Assessed Civil Penalties
Warning Letter (WL)	72	72	168	N/A	-	-
Notice of Amendment (NOA)	71	70	312	149	-	-
Notice of Probable Violation (NOPV)	78	66	303	331	\$11,517,183	\$8,881,015
Proposed Safety Order (PSO)	3	0	N/A	-	-	-
Corrective Action Order (CAO)	3	1	N/A	567	-	-



2023 High-Level Status Overview

	Cases Initiated	Cases Closed	Findings	Avg. Days to Closure	Proposed Civil Penalties	Assessed Civil Penalties
Warning Letter (WL)	60	60	118	N/A	-	-
Notice of Amendment (NOA)	51	38	183	108	-	-
Notice of Probable Violation (NOPV)	81	33	323	197	\$12,190,180	\$11,288,500
Proposed Safety Order (PSO)	3	0	N/A	-	-	-
Corrective Action Order (CAO)	3	0	N/A	-	-	-

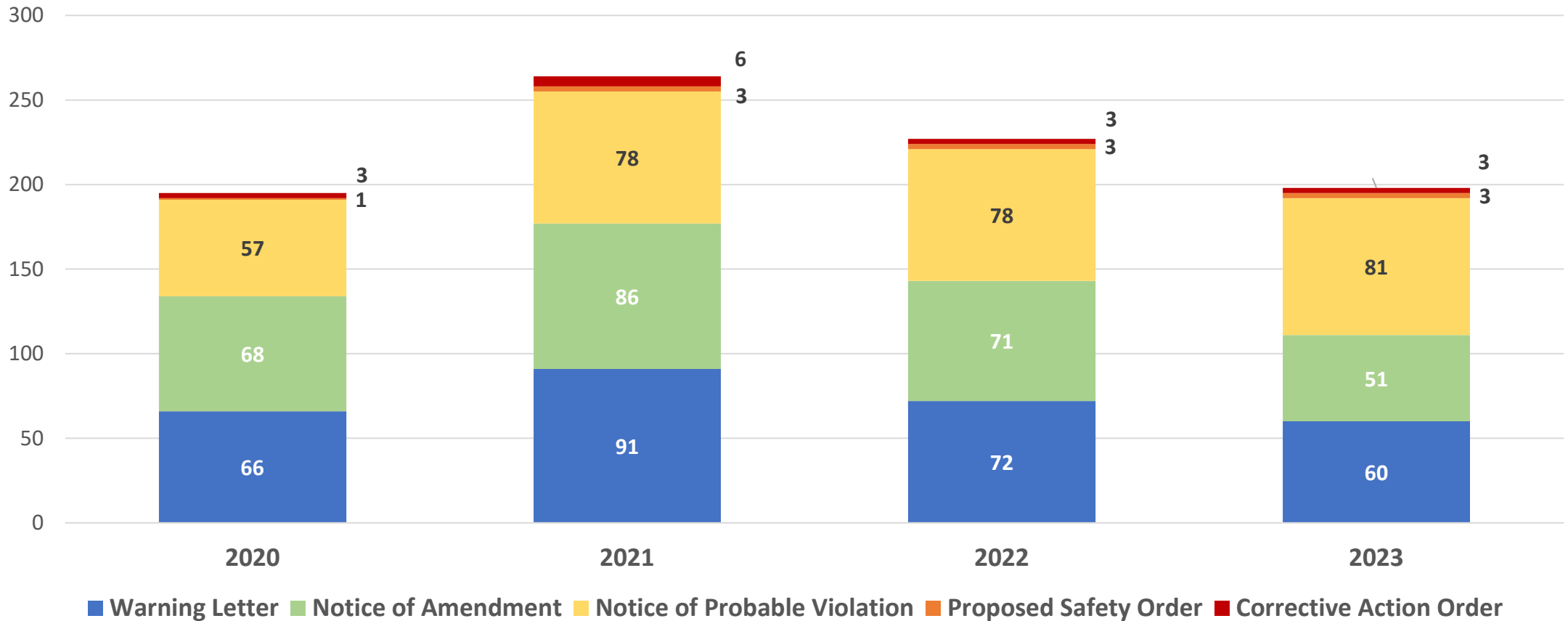


2020-2023 High-Level Status Overview

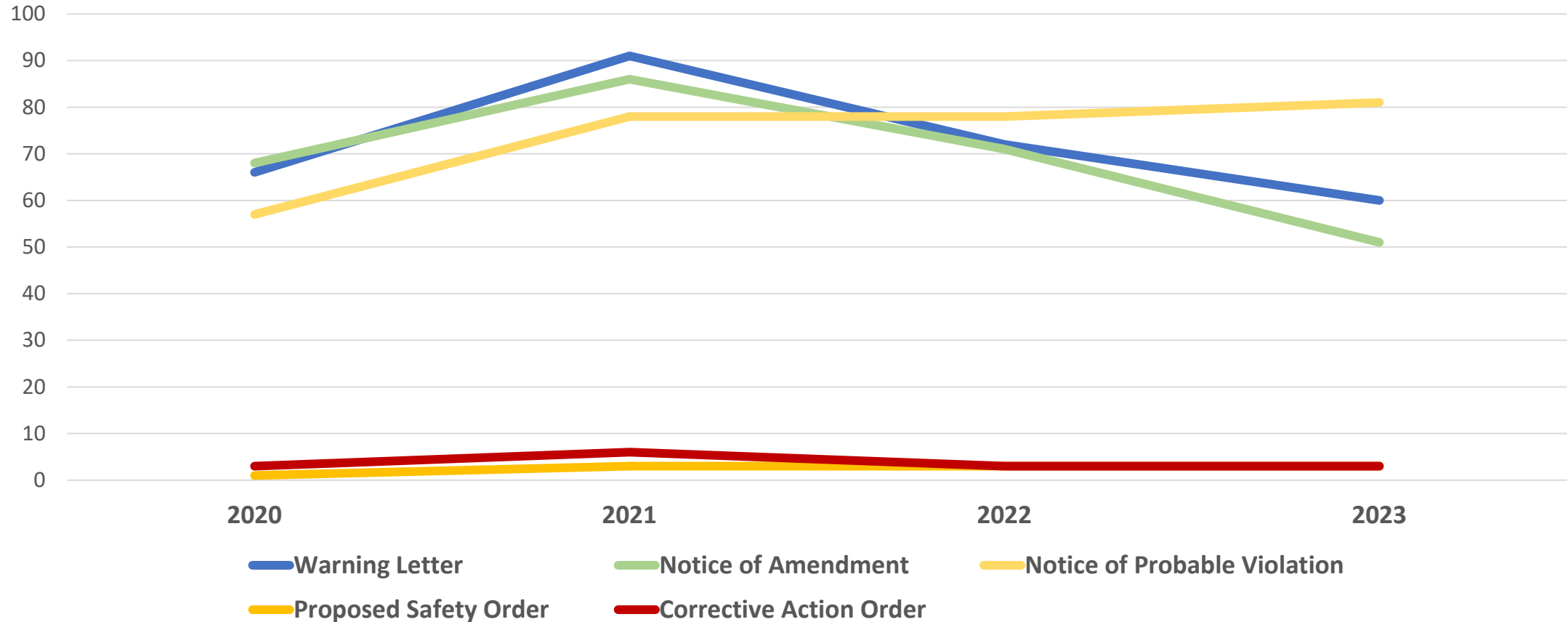
	Cases Initiated	Cases Closed	Findings	Avg. Days to Closure	Proposed Civil Penalties	Assessed Civil Penalties
Warning Letter (WL)	289	289	694	N/A		
Notice of Amendment (NOA)	276	260	1125	133		
Notice of Probable Violation (NOPV)	294	223	1114	289	\$36,906,914	\$31,100,274
Proposed Safety Order (PSO)	10	1	N/A	873		
Corrective Action Order (CAO)	15	6	N/A	686		



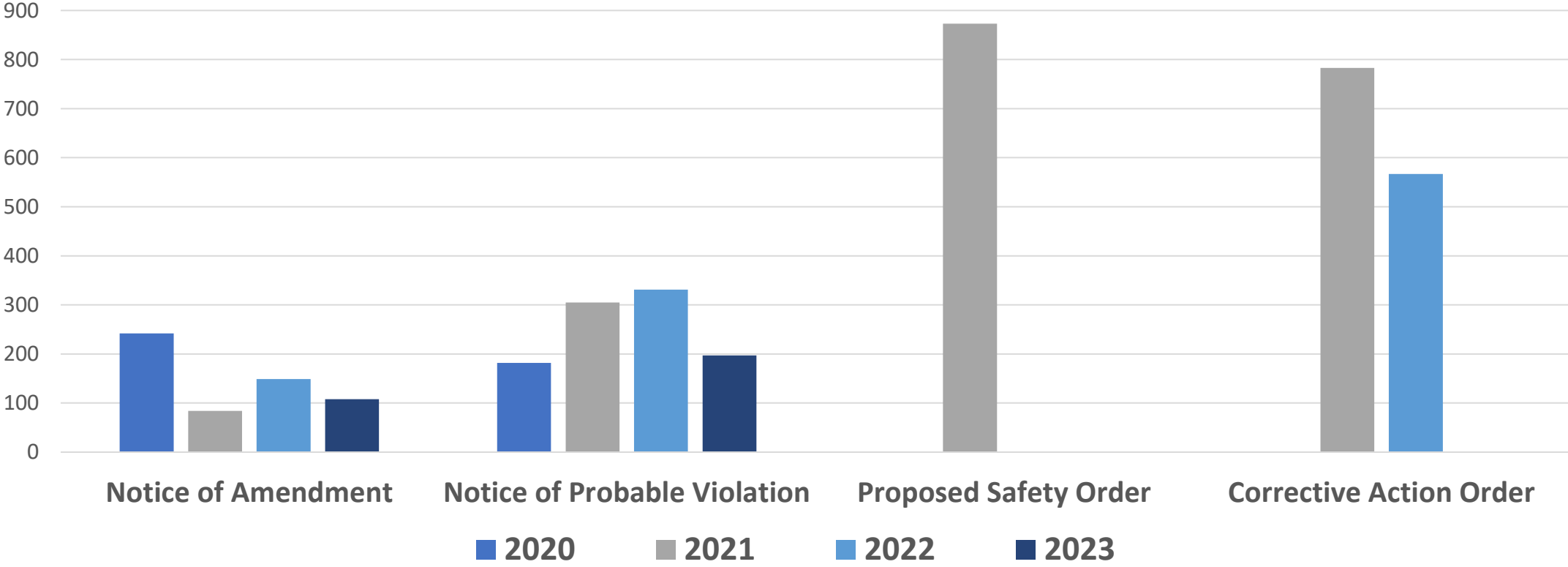
Enforcement Actions Issued



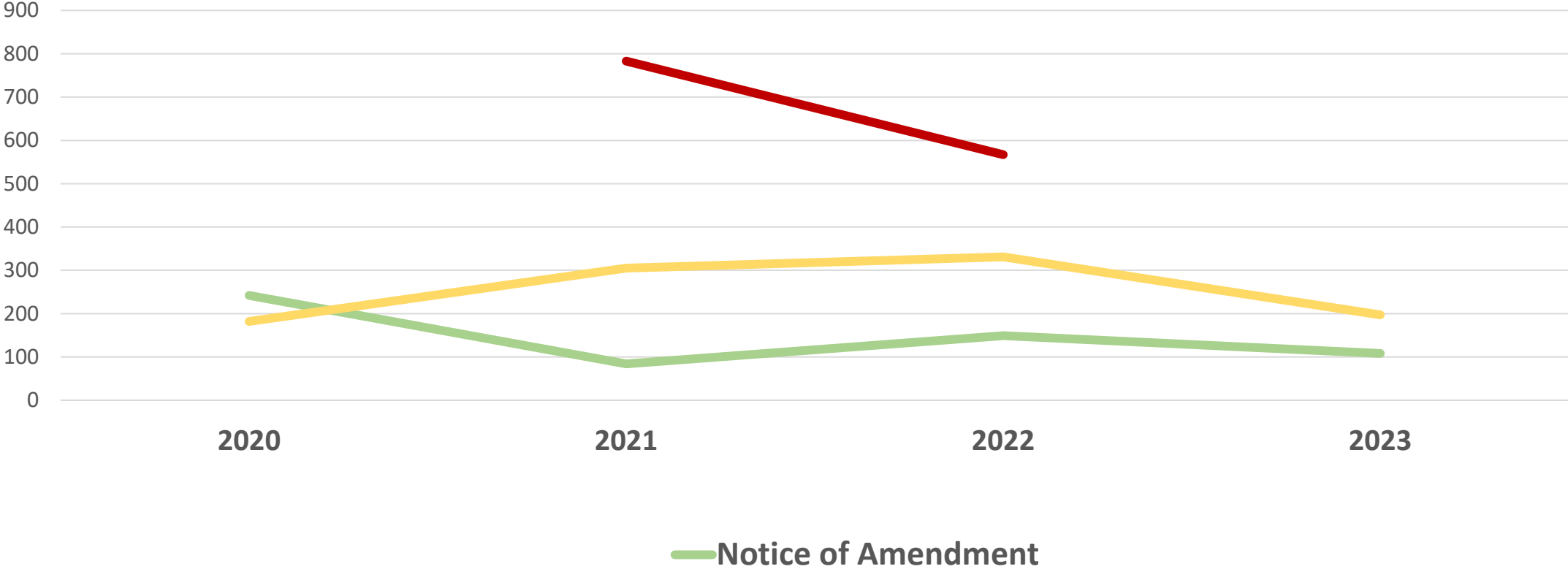
Enforcement Actions Issued



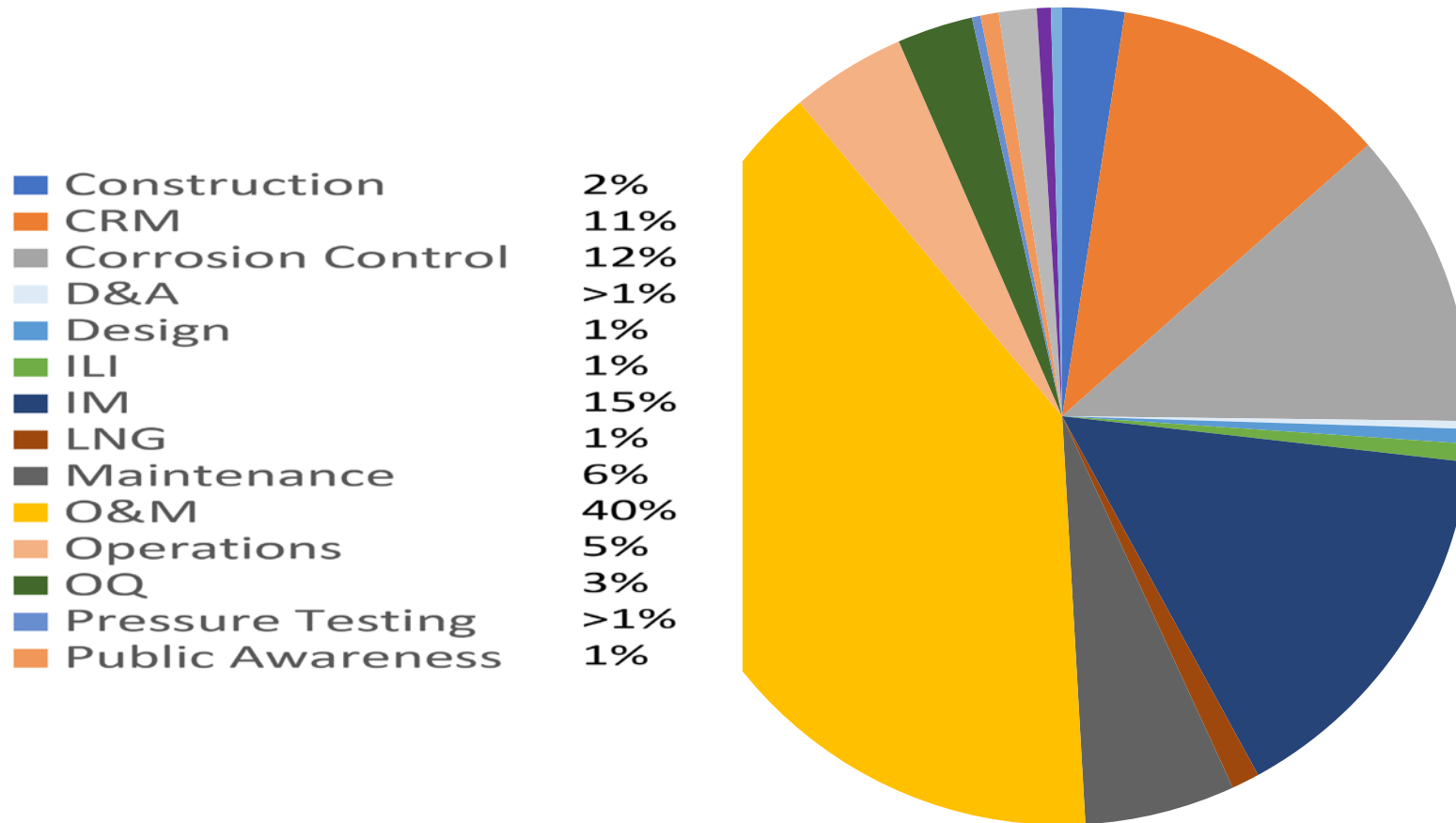
Average Days to Close Cases



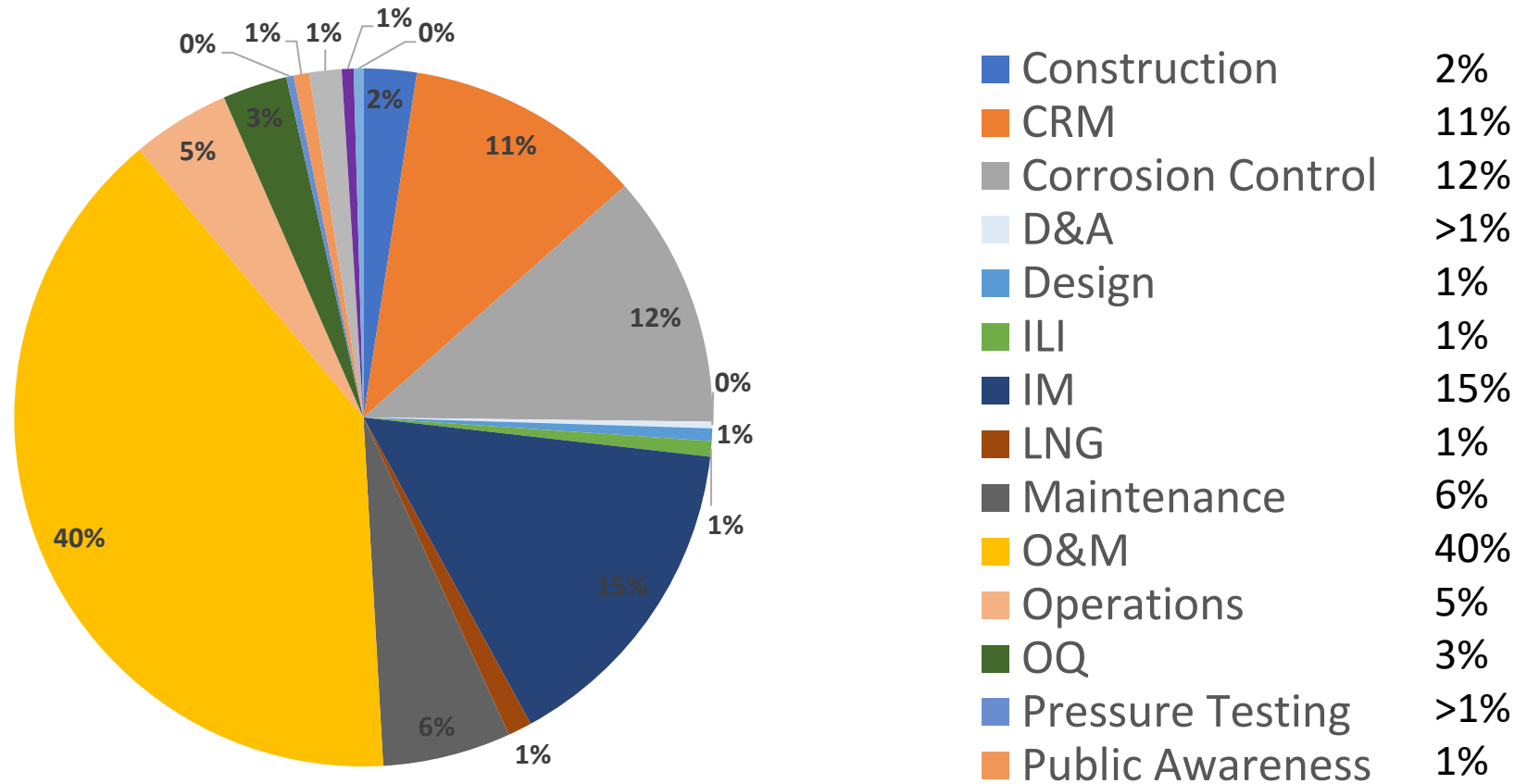
Average Days to Close Cases



Civil Penalties by Group



Civil Penalties by Group



Enforcement Details by Group

Section	# Enforcements	# Findings Total	# Findings w/ Penalty	# Findings w/o Penalty	% Findings w/ Penalty	Avg. Penalty	Total Civil Penalties Assessed
Construction	95	144	12	132	8.3	\$63,666.67	\$764,000
Control Room Management	122	574	35	539	6.1	\$97,785.83	\$3,422,504
Corrosion Control	186	304	64	240	21.1	\$56,994.38	\$3,647,640
Drug/Alcohol	5	15	3	12	20	\$32,066.67	\$96,200
Damage Prevention	4	4	0	4	0	-	\$0
Design	39	40	3	37	7.5	\$60,433.33	\$181,300
DIMP	9	15	0	15	0		\$0
General	2	2	0	2	0	-	\$0
ILI	8	8	1	7	12.5	\$222,504.00	\$222,504
Integrity Management	158	254	38	216	15	\$124,794.82	\$4,742,203



Enforcement Details by Group cont.

Section	# Enforcements	# Findings Total	# Findings w/ Penalty	# Findings w/o Penalty	% Findings w/ Penalty	Avg. Penalty	Total Civil Penalties Assessed
Maintenance	63	103	25	88	24.3	\$73,930.64	\$1,848,266
O&M	338	752	95	657	12.6	\$130,354.96	\$12,383,721
Operations	65	98	11	87	11.22	\$128,635.36	\$1,414,989
OQ	79	125	19	106	15.2	\$48,994.74	\$930,900
Pressure Testing	28	31	4	27	12.9	\$26,450.00	\$105,800
Public Awareness	26	34	6	28	17.7	\$37,150.00	\$222,900
Reporting	103	117	15	102	12.8	\$31,020.00	\$465,300
Response Plans	18	27	5	22	18.5	\$34,220.00	\$171,100
Special Permit	3	3	3	0	100	\$45,800.00	\$137,400
UNGS	103	257	0	257	0	-	\$0
LNG	9	26	3	23	11.5	\$114,482.33	\$343,447



Most Penalized Topics

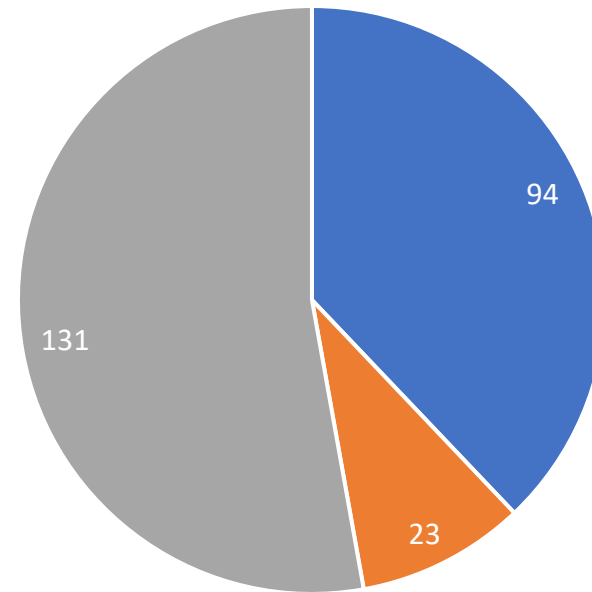
- **O&M** - \$12,388,721 (40%)
- **Integrity Management** - \$4,742,303 (15%)
- **Corrosion Control** - \$3,647,640 (12%)
- **Control Room Management** - \$3,422,504 (11%)



Enforcements – O&M

- Accounts for 40% of all Civil Penalties assessed
- Procedure Effectiveness cited in 15 cases, including one fatality
- Inspecting/Testing Pressure Limiting Devices and Valves
- ROW Maintenance / Patrolling

Cases Initiated



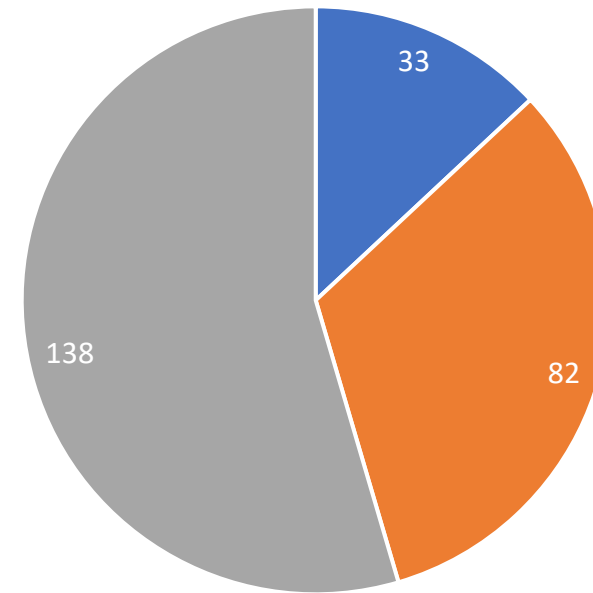
■ Warning Letter ■ Notice of Amendment ■ NOPV



Enforcements – Integrity Management

- Accounts for 15% of all Civil Penalties assessed
- Integrity Management in HCAs
- Risk Analysis & Data Integration
- Leak Detection Systems

Cases Initiated

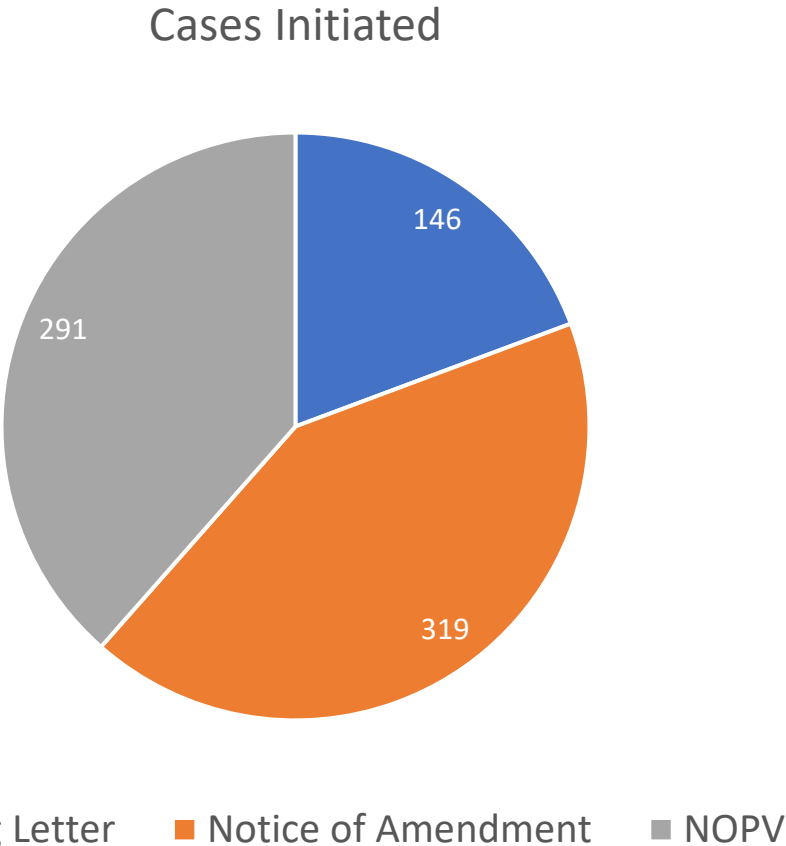


■ Warning Letter ■ Notice of Amendment ■ NOPV



Enforcements – Corrosion Control

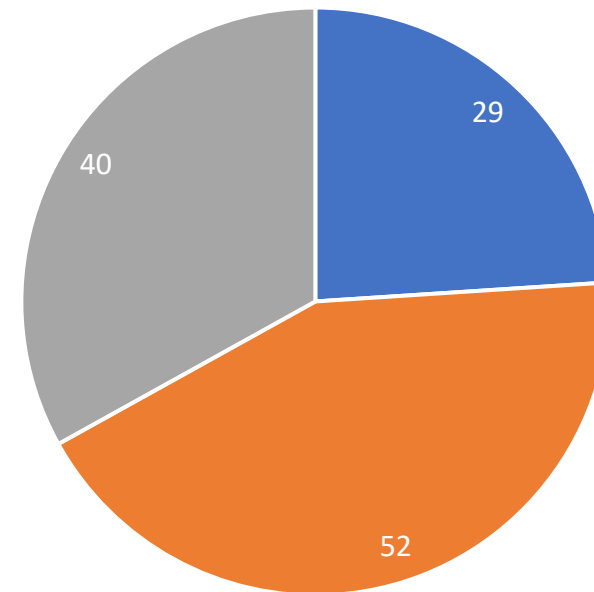
- Accounts for 12% of all Civil Penalties Assessed
- Internal Corrosion Control
- Atmospheric Corrosion Control



Enforcements – Control Room Management

- Accounts for 11% of all Civil Penalties assessed
- Internal Communication Plan
- Alarm Management
- Point-to-Point Verification
- Shift Changes

Cases Initiated



■ Warning Letter ■ Notice of Amendment ■ NOPV



Improving Internal Pipeline Safety Inspections

How to develop operations and maintenance practices and procedures to enhance pipeline safety and minimize the likelihood of the most common enforcement actions



Catastrophic Events

- Often result from a failure to follow code and/or procedure
- Significant human, environmental, operational, commercial, legal, and reputational costs



Costs Beyond Civil Penalties

- Human life
- Environmental Damage
- Operational Restrictions
- Commercial Impacts
- Societal Impacts
- Legal Fees
- Remediation Costs
- Reputational Costs



San Bruno, CA - 2010

Event

- 30" gas pipeline ruptured in a residential neighborhood
- Created a crater 167' by 26' and 40' deep
- 8 fatalities

Consequences

- \$558 million in third-party claims, and \$92 million in legal costs
- Fined more than \$1.6 billion
- Automation of over 200 valves, strength-testing over 700 miles of pipe, replacing 185 miles, and upgrading another 200 miles to allow in-line inspection



Kalamazoo, MI - 2010

Event

- 30" oil pipeline ruptured
- 1 million gallons of heavy crude released into waterway
- More than 30 homes evacuated
- Drinking water advisory issued

Consequences

- Remediation costs in excess of \$1.2 billion
- Fined more than \$1.6 billion



Merrimack Valley, MA - 2018

Event

- Gas distribution system was over-pressured
- Explosions and fires in around 40 homes
- One fatality and at least 25 injuries

Consequences

- Remediation costs in excess of \$1 billion
- Legal costs of \$143 million
- \$53 million in fines
- 3 years of operational probation



Washington, KS - 2022

Event

- 36" oil pipeline ruptured
- 588,000 gallons of oil spilled into waterway
- 5% spike in crude oil prices in the US

Consequences

- Remediation costs in excess of \$480 million
- Reduced operating pressure
- Mandated multi-year program to perform exploratory and confirmation digs



Take Aways

- Safety Involves All Aspects of Operations (Safety Culture)
- Ensuring regulatory compliance is vital in preventing catastrophic event
- Civil Penalties can pale comparison to human, environmental, operational, commercial, legal, and reputational costs



Questions?

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