

PHMSA and LaDENR Enforcement History 2020-2023

Louisiana Gas Association
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Purpose

- Review PHMSA Enforcement History (CY 2020 - 2023).
- Review LaDENR Enforcement History (CY 2020 - 2023).
- Review & Rank enforcement penalties & actions for the largest civil penalties imposed by regulatory code section.
- Develop additional insight into potential regulatory deficiencies and practical O&M solutions to enhance pipeline integrity and safety while reducing regulatory non-compliance exposure.



Outline

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



State and Federal Enforcement

LaDENR maintains a Federal State Partnership with PHMSA via *49 U.S. Code § 60105*

1. Has codified all PHMSA pipeline safety regulations (e.g., gas, hazardous liquids, UNGS)
2. Includes additional regulatory requirements via:
 - LA Hazardous Liquids Pipeline Regulations - Title 33 Part V. Subpart 1
 - LA Gas Pipeline Regulations – Title 43 Part XIII. Subpart 1
3. LaDENR conducts enforcement via:
 - LA Hazardous Liquids Pipeline Enforcement - *Title 33 Part V. Subpart 3 Chapter 313*
 - LA Gas Pipeline Enforcement – *Title 43 Part XI. Subpart 3 Chapter 27*

The enforcement processes are similar, but include differing mechanisms, progression, and sanctions



PHMSA and LaDENR Sanctions

Warning Letter - §190.205

- Issued by PHMSA
- No Civil Penalty
- Notifies an operator of one or more circumstances or conditions that are not in compliance with the regulations (49 CFR Parts 190 – 199)

Notice of Amendment - §190.206

- Issued by PHMSA
- No Civil Penalty
- Identifies apparent inadequacies in an operator's plans or procedures, and directs the operator to correct them



PHMSA and LaDENR Sanctions

Notice of Probable Violation - §190.207

- ***Issued by PHMSA***
- Alleges the existence of one or more probable violations
- May include a Civil Penalty and/or a Compliance Order
- Operators may issue a response, request a hearing, or accept findings

Letter of Noncompliance - §2903 & §31309

- ***Issued by LaDENR***
- Alleges the existence of one or more probable violations
- Informs operator of reinspection timeline to confirm compliance
- Operator may request a conference
- May result in reissuance of citation or a Show Cause Hearing



PHMSA and LaDENR Sanctions

Show Cause Hearing - §2907 & §31313

- Issued by *Office of Conservation*
- Operator shall be given at least 10 days notice
- May issue such subpoenas as may be necessary for the attendance of witnesses and the production of documents



PHMSA and LaDENR Sanctions

Compliance Order - §190.217

- ***Issued by PHMSA***
- May be included as part of a Notice of Probable Violation (NOPV)

Civil Penalty - § 190.221

- ***Issued by PHMSA***
- May be included as part of a Notice of Probable Violation (NOPV)
- Based on civil penalty calculator

Order of Compliance - §2907 & §31313

- ***Issued by Office of Conservation***
- Provided at the conclusion of Show Cause hearing
- Determination for each finding
- Actions to be taken by the operator
- May tax the operator with all costs of the hearing
- Failure to comply results in civil and/or criminal action



PHMSA and LaDENR Sanctions

Issued by PHMSA

Corrective Action Order - §190.233

- Often the result of an accident/incident
- Risk to public safety, property, or the environment
- Mandates actions to be taken to ensure safety

Safety Order - §190.239

- Often the result of systemic issue
- Risk to public safety, property, or the environment
- Mandates actions to be taken to ensure safety

Emergency Order - §190.236

- Significant imminent hazard
- Often a complete shutdown of pipeline/facility/system
- Investigation initiated

Emergency Order - §2909 & §31315

Issued by Office of Conservation

- An emergency is defined as the lack of odorant in gas required to be odorized or any situation where there is a substantial likelihood that loss of life, personal injury, health or property will result
- May include an order for termination of the offending service
- Issued when the situation requires enforcement action in an expedited manner
- Bypasses Letter of Noncompliance and Show Cause Hearing



LaDENR Civil Action

Civil Enforcement Injunction - §2911, §31319

- Used when an operator has engaged, is engaged, or is about to engage in any act or practice constituting a violation of an applicable rule, regulation or order
- May result in a restraining order or injunction commanding any person to comply
- May require restitution of money received in violation of any rule, regulation or order



LaDENR Criminal Action

Criminal Enforcement, Penalties - §2913, §31321

- Evidence concerning acts or practice in violation of any rule, regulation or order issued or any order issued may be provided to the district attorney
- Fines of up to \$10,000 and/or up to one year in jail for each violation
 - Any person who willfully violates any provision any rule, regulation or order issued
 - Any person who willfully furnishes false information to the assistant secretary
- \$1,000 fine per day
 - Failure to, within 60 day, comply with any rule, regulation or order adopted by the Office of Conservation



PHMSA Criminal Action

Criminal Penalties and Referrals - § 190.291, § 190.293

- It is a federal crime for any person to “knowingly” and “willfully” conspire to commit any offense against a federal agency or to “knowingly” and “willfully” 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.



PHMSA Civil Penalty Calculations

- **Nature** – missing, inaccurate, incomplete records
- **Circumstances** – self report, agency discovery, public
- **Gravity** – severity/effect to safety, HCA, # violation instances, Consequence factor multipliers
- **Culpability** – operator actions before violation, operator took documented action to remedy
- **Prior Offenses**
- **Good Faith** – reasonable justification for non-compliance
- **Other Matters as Justice May Require** – violation of operators own higher standard, failure to report death
- **Economic Benefit** - \$\$ gained from non-compliance
- **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 \$37,140,814.00 in Civil Penalties (164 enforcement actions) and ultimately assessed \$21,163,053.00.
- Operators effectively argued for reduced Civil Penalties for 55 of the 131 enforcements that assessed civil penalties – a success rate of just under 42%



SCOTUS Ruling

- The US Supreme Court struck down “Agency Deference” on June 28, 2024.
- 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.



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.

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.

Review the seven (7) largest civil penalties assessed by PHMSA between 2020-2023.



Procedure Effectiveness

- **\$2,186,465.00 Civil Penalty**
- **Fatality**
- **Compliance Order (CO) (conduct procedure effectiveness review, new procedures re encountering ice build-up, training)**
- **§ 192.605(b)(8)**
- **Failed to performance effectiveness reviews on procedures used during pig retrieval**



Non-Integrity Management Repairs and HCAs

- **\$1,935,300**
- § 195.401(b)(1) - *General requirements – Non integrity management repairs*
- Failure to address adverse condition within reasonable timeframe, resulted in pipeline failure.
- **\$764,400**
- **CO (Perform Risk-Analysis & ID all threats to PL)**
- **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.*
- Failed to follow written manual of procedures for normal/abnormal operations
- **\$1,228,900**
- **CO (Amend procedures, Qual/Training records review/submission)**
- **558 barrels of crude oil released**
- § 195.446(a) – *Control Room Management*
- Failed to follow CRM Plan and procedures.



Pipeline Integrity Management in HCAs

- **\$1,400,000**
- **11,0000 barrels of gasoline released**
- **CO (annual interim review of Data Integration Program)**
- *§ 195.452(g)(3) - 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

- **\$846,300**
- **Nation-wide fuel impact**
- **CO (Test & Verify Internal Communications Plan)**
- **§ 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



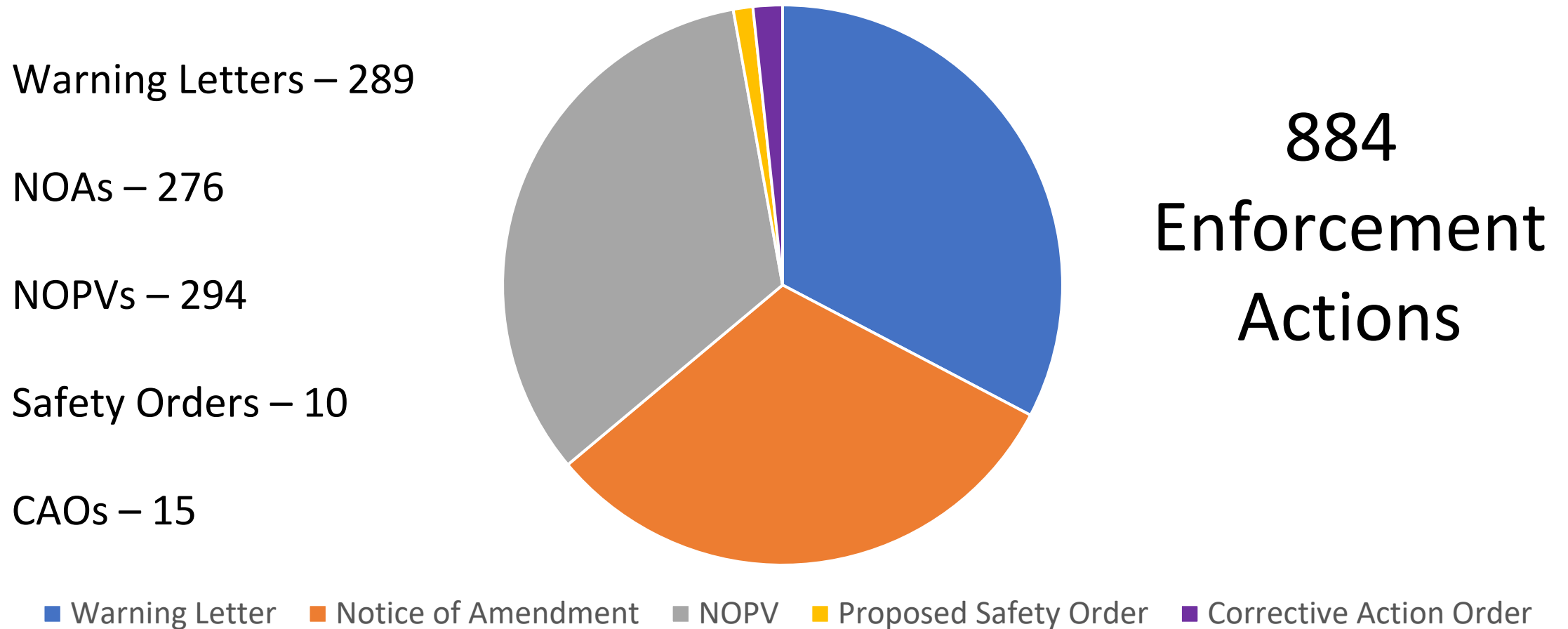
Objective 2

ID/review regulatory code sections that most often resulting in enforcement actions (with or without civil penalties) over the last 4 CY.

Assist 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 (86%)	182	270	\$3,780,321	\$3,333,450 (88%)
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 (96%)	306	305	\$9,419,230	\$7,597,306 (81%)
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 (85%)	303	331	\$11,517,183	\$8,881,015 (77%)
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 (41%)	323	197	\$12,190,180	\$11,288,500 (93%)
Proposed Safety Order (PSO)	3	0	N/A	-	-	-
Corrective Action Order (CAO)	3	0	N/A	-	-	-

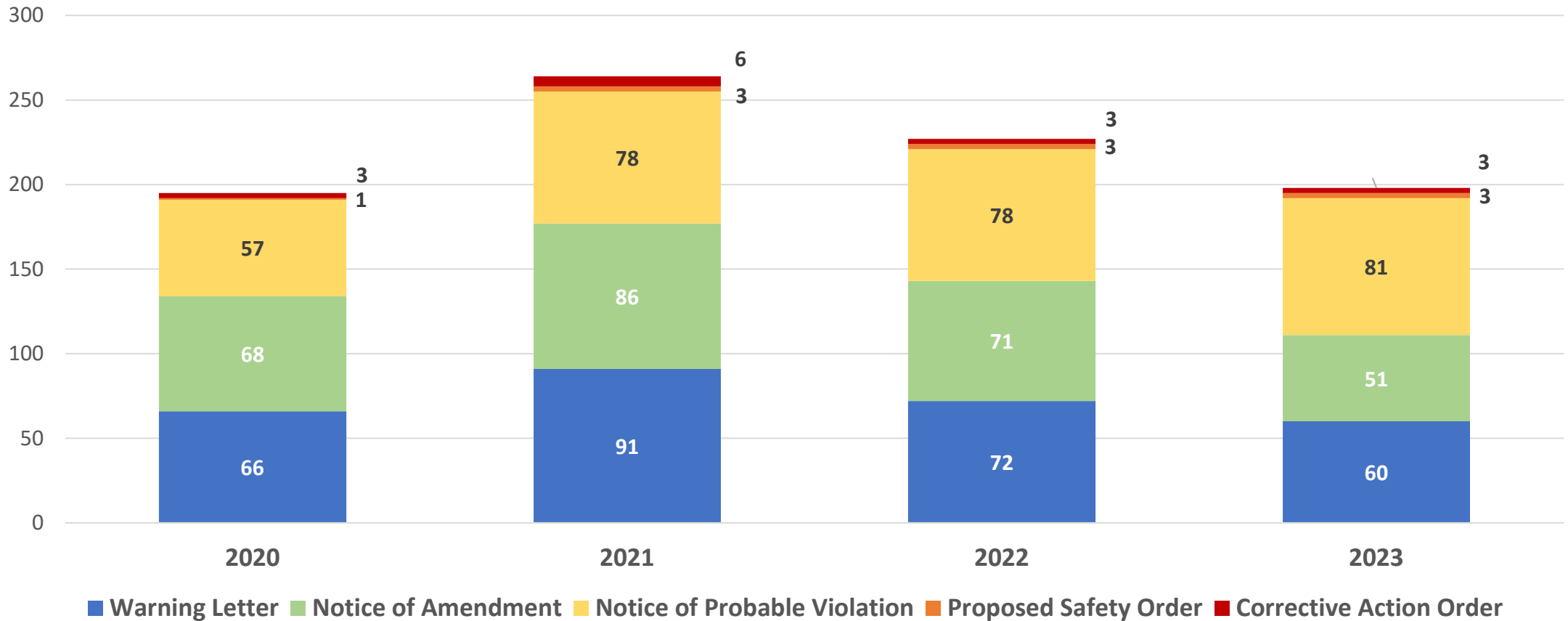


2020-2023 High-Level Status Overview

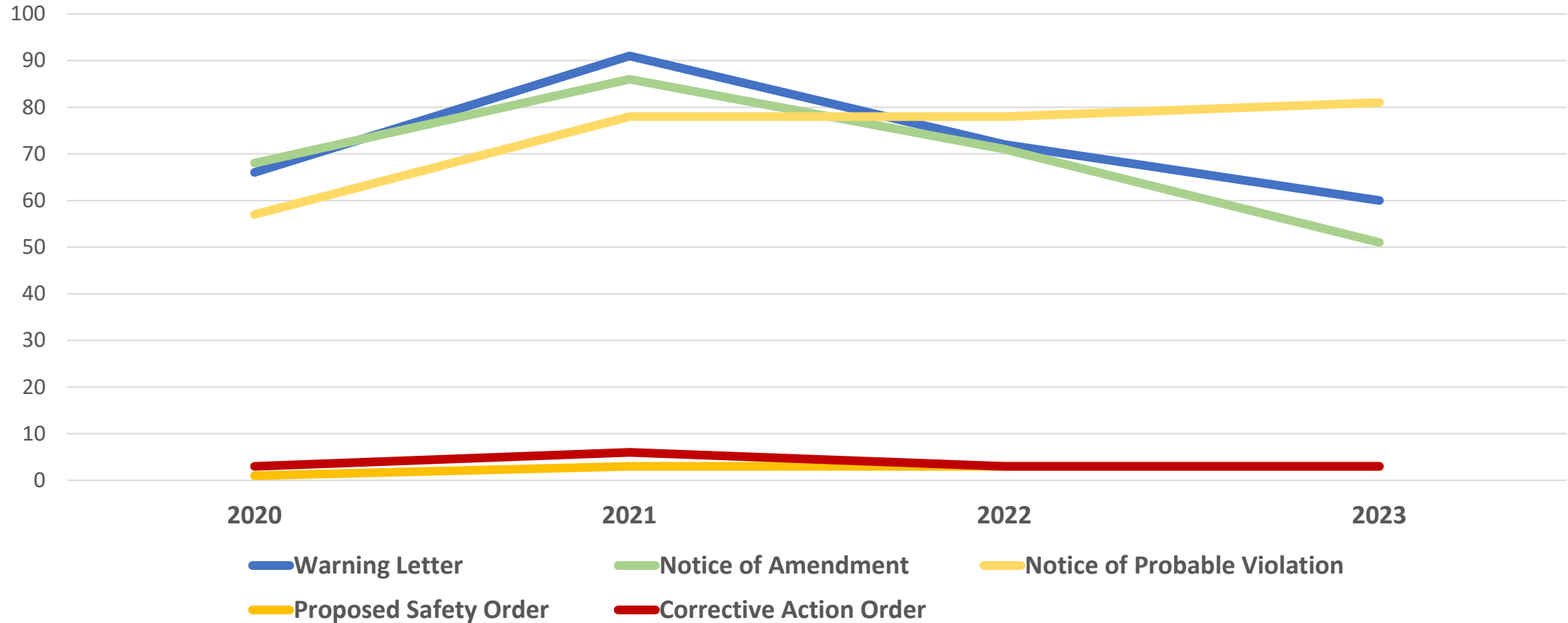
	Cases Initiated	Cases Closed	Findings	Avg. Days to Closure	Proposed Civil Penalties	Assessed Civil Penalties
Warning Letter (WL)	289	289	694	N/A		
Notice of Amendment (NOA)	276	260	1125	133		
Notice of Probable Violation (NOPV)	294	223 (76%)	1114	289	\$36,906,914	\$31,100,274 (84%)
Proposed Safety Order (PSO)	10	1	N/A	873		
Corrective Action Order (CAO)	15	6	N/A	686		



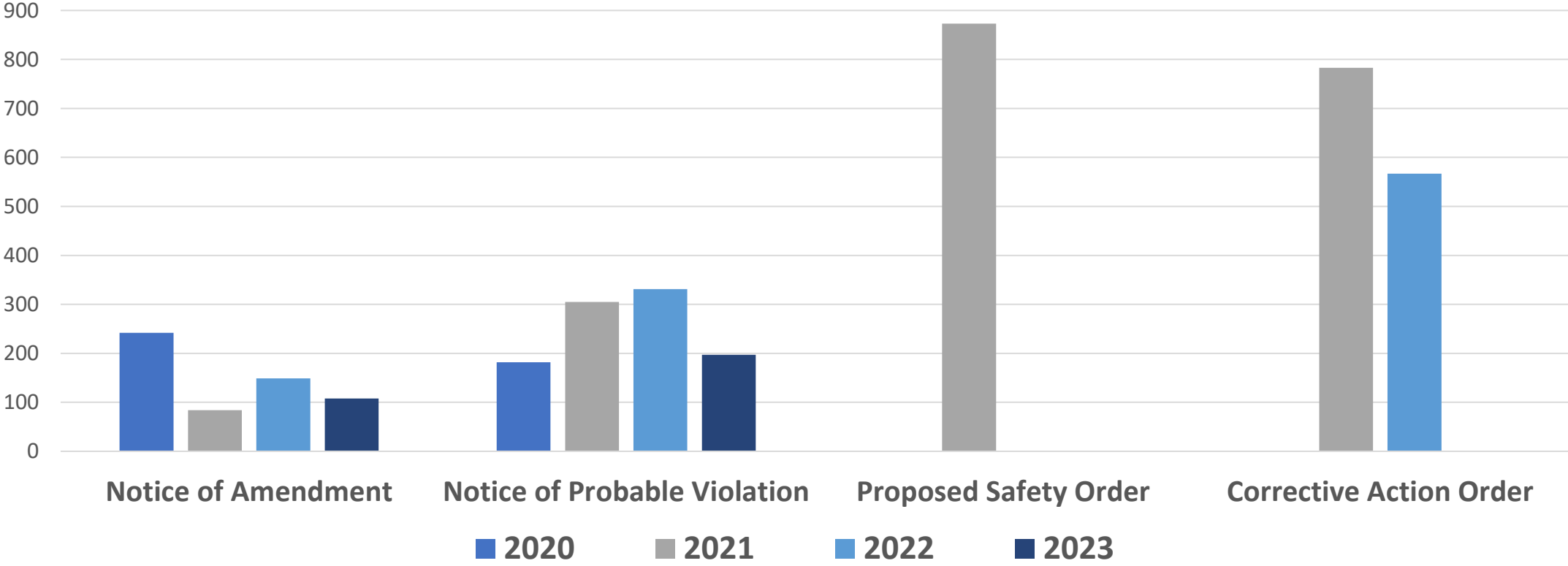
Enforcement Actions Issued



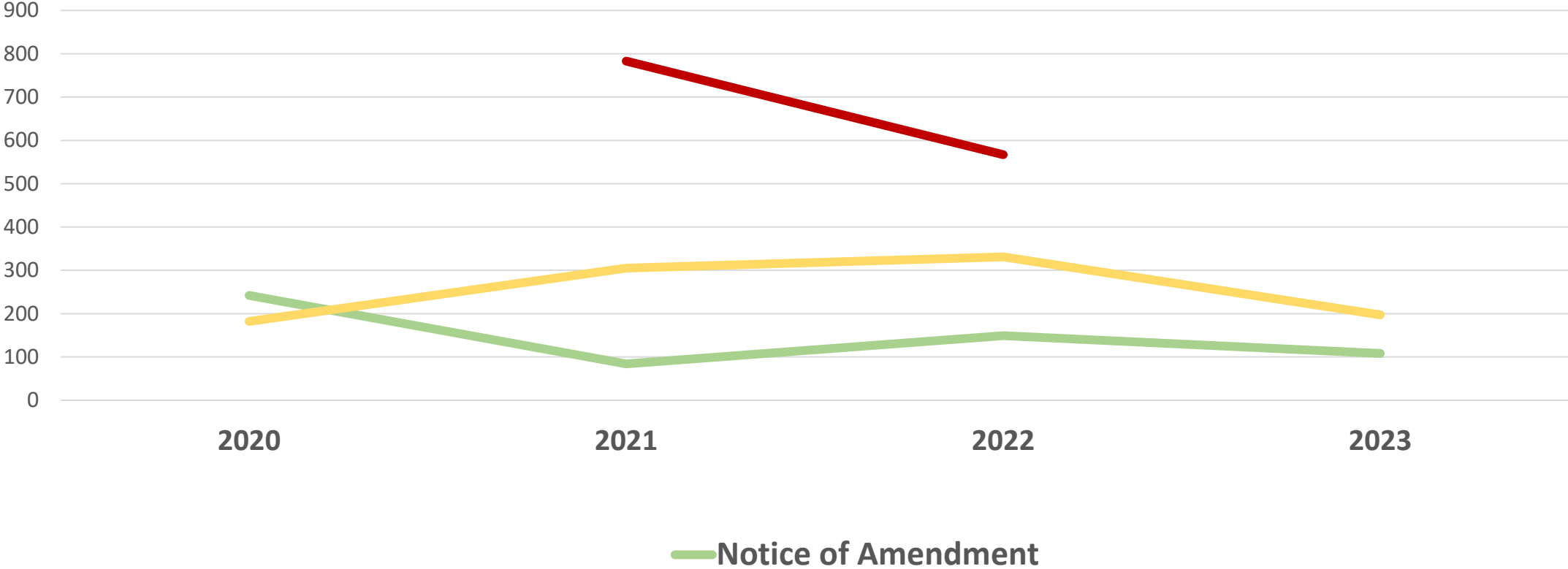
Enforcement Actions Issued



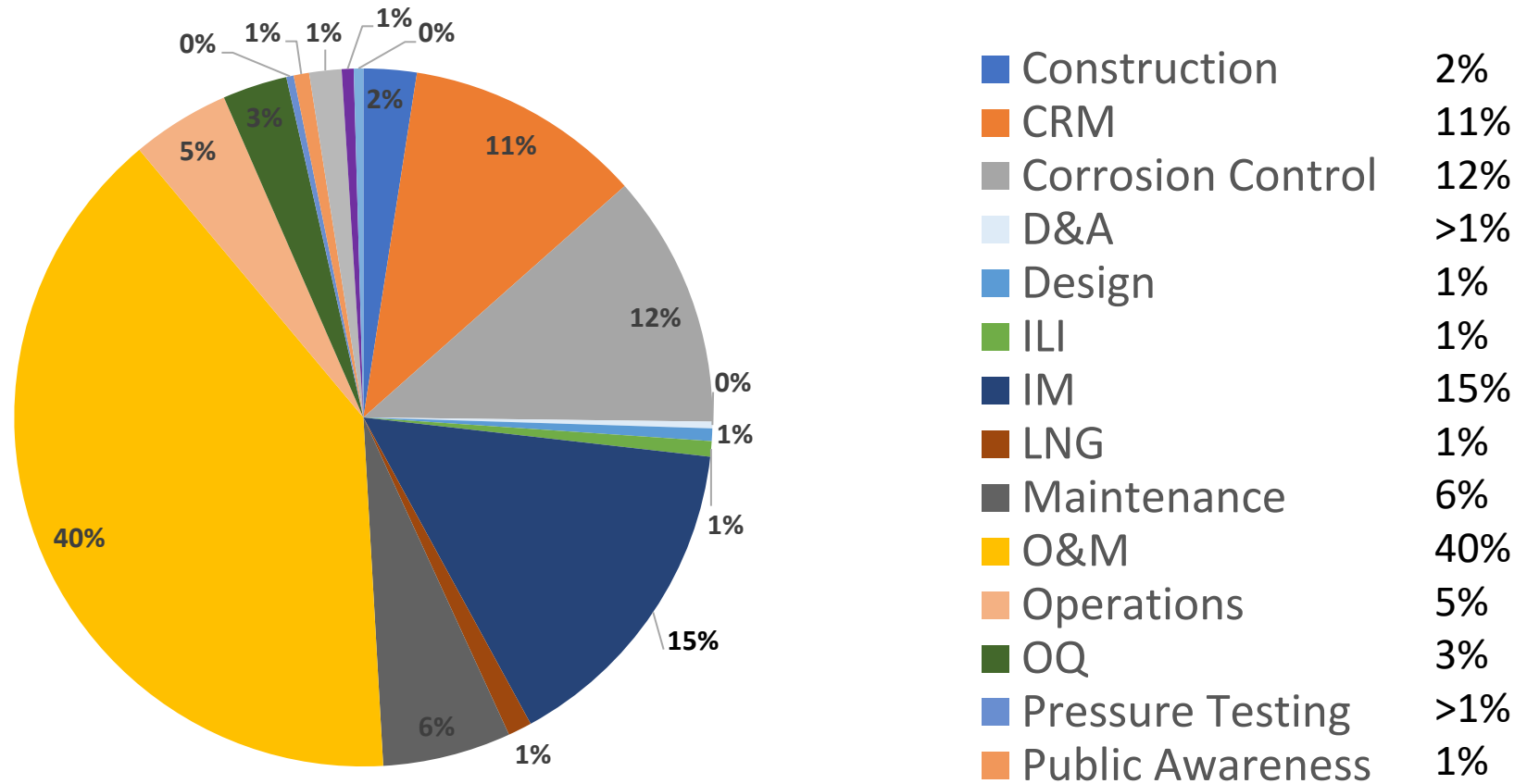
Average Days to Close Cases



Average Days to Close Cases



Civil Penalties by Group



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



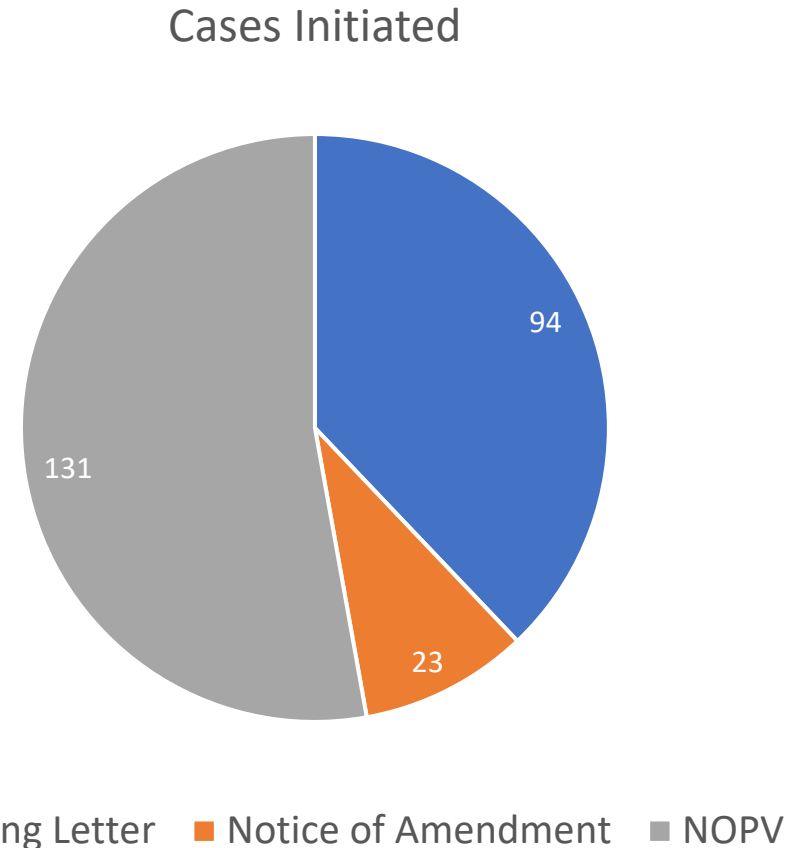
Most Penalized Topics

- **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

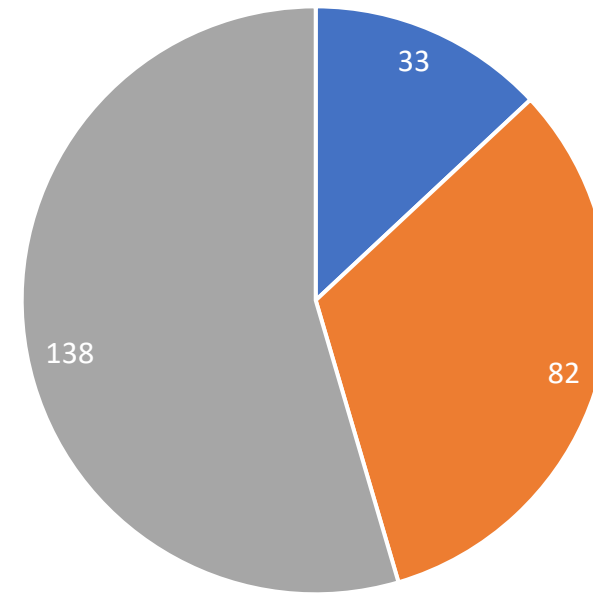
- Accounts for 40% of all Civil Penalties assessed
- Procedure Effectiveness cited in 15 cases, including one fatality
- Inspecting/Testing Pressure Limiting Devices and Valves
- ROW Maintenance / Patrolling



Enforcements – Integrity Management

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

Cases Initiated

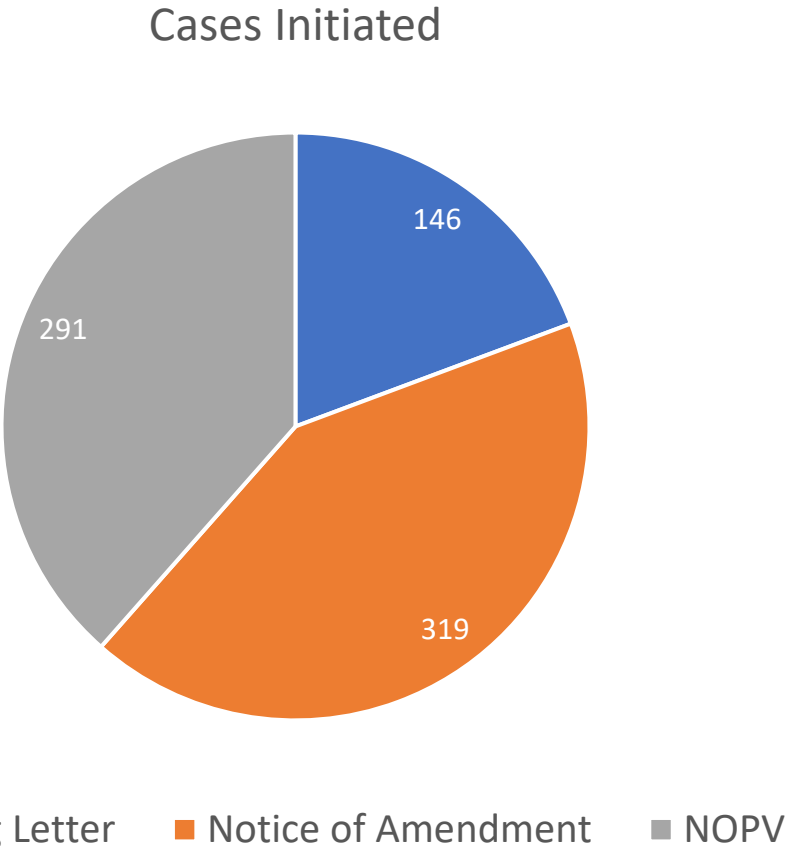


■ Warning Letter ■ Notice of Amendment ■ NOPV



Enforcements – Corrosion Control

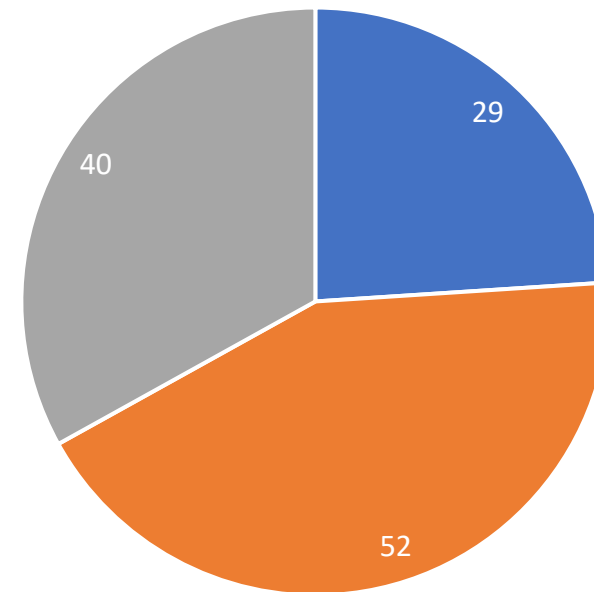
- Accounts for 12% of all Civil Penalties Assessed
- Internal Corrosion Control
- Atmospheric Corrosion Control



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



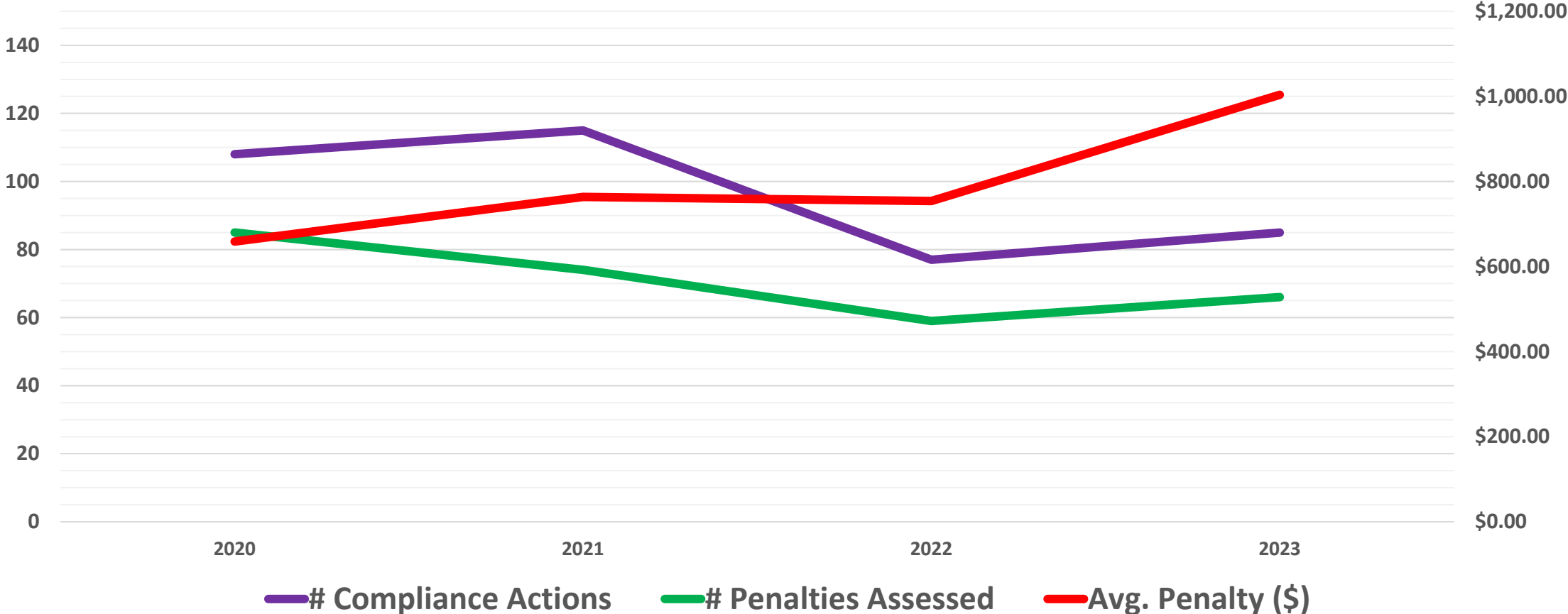
LaDENR

Enforcement and Penalties

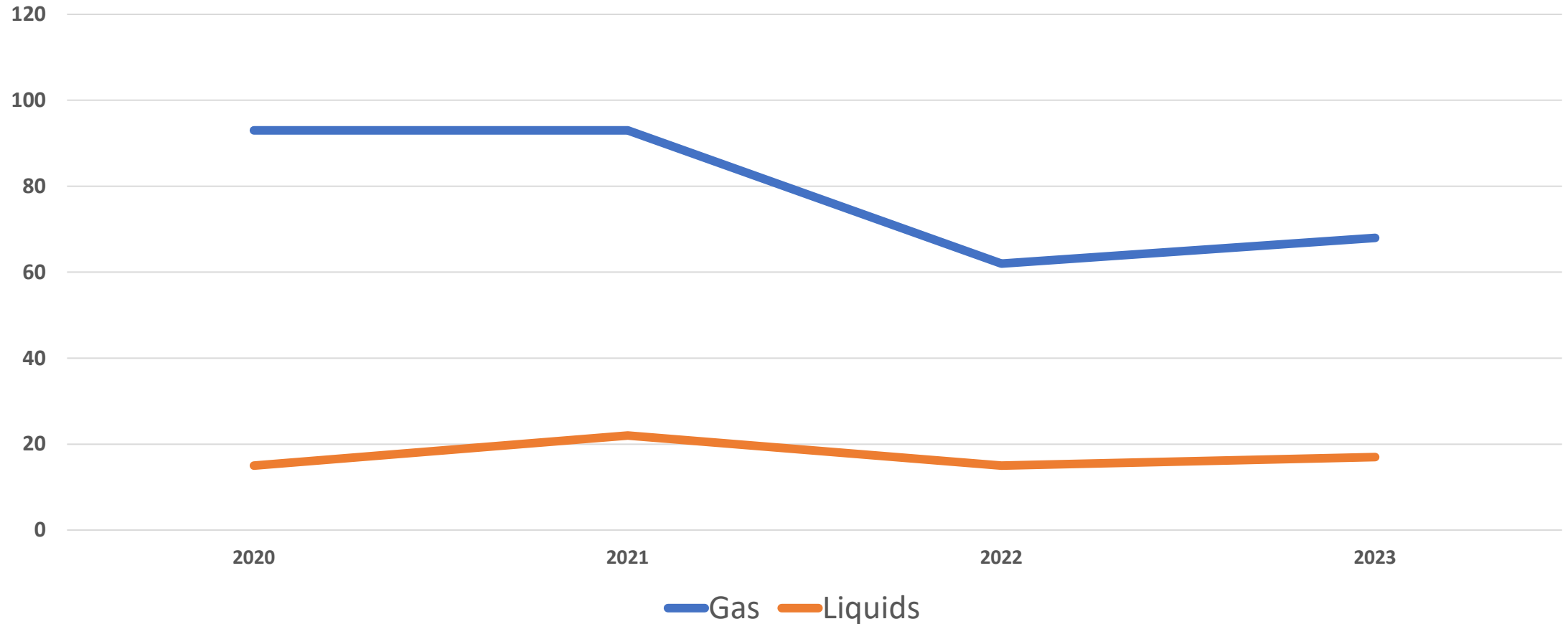
LaDENR is consistent with PHMSA when you consider the gravity of the citations with penalties (e.g., type and number of failures/incidents).



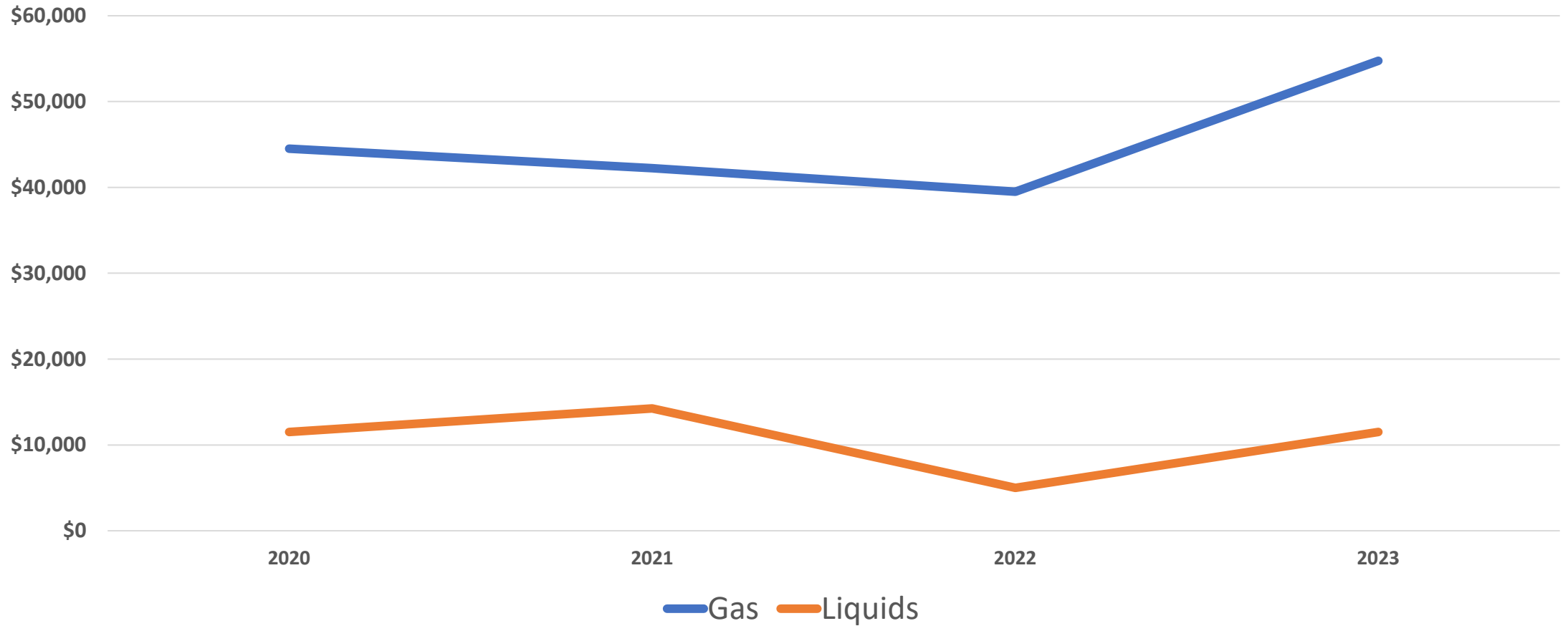
High Level Overview of LaDENR Enforcements



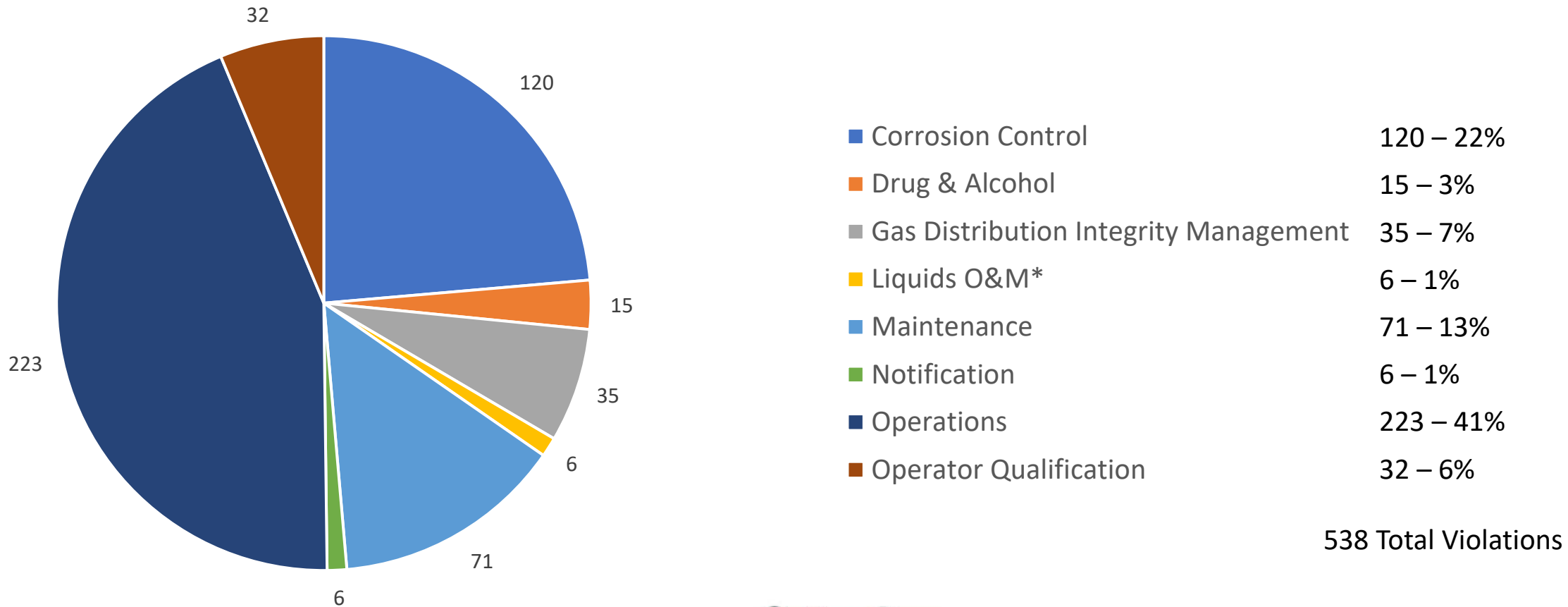
Compliance Actions Taken by LaDENR



Penalties Assessed by LaDENR



LaDENR Violations by Subpart – CY 2020 through 2023



LaDENR

Most Frequently Cited Code Sections

- **§ 192.465 *External corrosion control: Monitoring and remediation***
 - 67 Violations
- **§ 192.624 *Maximum allowable operating pressure reconfirmation: Onshore steel transmission pipelines***
 - 46 Violations
- **§ 192.619 *Maximum allowable operating pressure: Steel or plastic pipelines***
 - 40 Violations
- **§ 192.621 *Maximum allowable operating pressure: High-pressure distribution systems***
 - 36 Violations



PHMSA / LaDENR Violation Topic Comparison

PHMSA*

LaDENR

1. O&M	51%	↔	1. O&M	54%
2. Integrity Management	15%	↗	2. Corrosion Control	22%
3. Corrosion Control	12%	↘	3. Gas DIMP	7%
4. CRM	11%		4. Operator Qualification	6%
5. Operator Qualifications	3%	↖	5. Drug & Alcohol	3%
6. Construction	2%		6. Notifications	1%

*Violations Resulting in Civil Penalties



PHMSA / LaDENR Overlapping Topics

Operations and Maintenance

- Breadth of code sections
- Frequent and ongoing activity
- Can be cited on any number of parts of a system
- Preventable! – Usually a lack of records and/or failure to perform task on time

Integrity Management

- LaDENR has focused primarily on gas distribution IMPs
- PHMSA has focused on IM within HCAs, data integration, and risk management

Corrosion Control

- A perennially popular item for states and PHMSA
- Frequently cited items of concern:
 - Pipe supports / clamps
 - Air-to-soil interfaces
 - Beneath insulation

Operator Qualifications

- Insufficient Records
- Covered tasks not identified
- Notification of significant changes to program



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

- 8 fatalities
- 35 homes completely destroyed (does not include damaged homes)
- 30” gas pipeline ruptured in a residential neighborhood
- Created a crater 167’ by 26’ and 40’ deep

Consequences

- **\$558 million** in third-party claims
- **\$92 million** in legal costs
- Stock fell 8% (**>\$1.5 billion** in capitalization)
- CPUC fine of **\$1.6 billion**
- Property damage > **\$220 million**
- Automation > 200 valves, strength-testing >700 miles of pipe, replacing 185 miles, and upgrading another 200 miles to allow in-line inspection (**\$769 million**, not including initial efforts and remediation)



Kalamazoo, MI - 2010

Event

- 30” oil pipeline ruptured
(Corrosion Fatigue)
- > 1 million gallons of heavy crude released into waterway
- More than 30 homes evacuated
- Drinking water advisory issued

Consequences

- > **\$1.2 billion** - Remediation costs
- **\$3.7 million** - PHMSA civil penalty
(22 probable violations)
- **\$177 million** - DOJ/EPA penalties



Merrimack Valley, MA - 2018

Event

- 1 fatality ≥ 25 injuries
- ~ 40 homes w/explosions and fires
- 30,000 people evacuated
- Gas distribution system was over-pressured

Consequences

- > **\$1 billion** - Remediation costs
- **\$143 million** - Legal costs
- MA Division US Attorneys Office Settlement
 - **\$53 million** in fines
 - Required operator to **Sell Gas Distribution Operations**
 - **3 years** of operational probation



Washington, KS – 2022 Mill Creek

Event

- 36” oil pipeline ruptured
- 588,000 gallons of oil spilled into waterway
- Caused by bending strain interacting with a weld flaw (original constr.)
- Created delivery choke point from Kansas south

Consequences

- **> \$480 million** - Remediation costs
- **5% spike** in crude oil prices in the US
- **20%** - temporary operating pressure reduction (96 mi along affected pipeline)
- Mandated **multi-year** program to perform exploratory and confirmation digs
- **PHMSA** – No Civil Penalty, issued **CAO**



Incident Cost -vs- Regulatory Penalty Cost

Incident	Regulatory Cost	All Other Recorded Costs	Total Cost
San Bruno, CA	\$ 1.6 billion	\$3.1 billion	\$4.7 billion
Kalamazoo, MI	\$180,700.00	\$1,2 billion	\$1.387 billion
Merrimack Valley	\$53 million	\$1.143 billion	\$1.196 billion
Washington, KS	\$0.00	> \$480,000	> \$480,000 (actually, much higher)



Take Aways

- Safety Involves All Aspects of Operations (Safety Culture).
- Whether regulated by the state or by PHMSA, similar process and similar areas of concern
- Ensuring regulatory compliance is vital in preventing catastrophic event.
- Civil Penalties can pale comparison to human, environmental, operational, commercial, legal, and reputational costs.



Bottom Line

- Compliance and O&M activities cannot be performed in a Vacuum.
- The design, construction, operations and maintenance, and abandonment/decommissioning of assets must be part of a fully integrated approach.
- Silo's & territorial ownership often lead to unwanted outcomes and challenges that may be very difficult to overcome.



Questions?

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