

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 60 PIPELINE CONSTRUCTION AND MAINTENANCE
PART 4 PIPELINE SAFETY ENFORCEMENT PROCEDURES

18.60.4.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[18.60.4.1 NMAC - N, 7-17-06]

18.60.4.2 SCOPE: This rule applies to all owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems in New Mexico subject to the jurisdiction of the commission pursuant to applicable laws.
[18.60.4.2 NMAC - N, 7-17-06]

18.60.4.3 STATUTORY AUTHORITY: Sections 8-8-4, 62-14-9.1, 62-14-10, and 70-3-13 NMSA 1978.
[18.60.4.3 NMAC - N, 7-17-06]

18.60.4.4 DURATION: Permanent.
[18.60.4.4 NMAC - N, 7-17-06]

18.60.4.5 EFFECTIVE DATE: July 17, 2006, unless a later date is cited at the end of a section.
[18.60.4.5 NMAC - N, 7-17-06]

18.60.4.6 OBJECTIVE: The purpose of this rule is to prescribe procedures to administer and enforce Chapter 62, Article 14 NMSA 1978, and the Pipeline Safety Act, Sections 70-3-11 to 70-3-20 NMSA 1978.
[18.60.4.6 NMAC - N, 7-17-06]

18.60.4.7 DEFINITIONS: In addition to the definitions in 18.60.2.7 and 18.60.5.7 NMAC, as used in this rule, **respondent** means an owner or operator of gas and hazardous liquid pipelines or underground facilities, an excavator, or a one-call notification system.
[18.60.4.7 NMAC - Rp, 18.60.2.7 NMAC, 7-17-06]

18.60.4.8 INSPECTIONS AND INVESTIGATIONS:
A. Pipelines.

- (1) Staff is authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, those records and pipeline facilities of an owner or operator relevant to determining whether the owner or operator is in compliance with applicable laws.
- (2) Staff may conduct an inspection pursuant to:
 - (a) scheduling by staff;
 - (b) a written complaint received from a member of the public;
 - (c) information obtained from a previous inspection;
 - (d) an accident or incident; or
 - (e) whenever the commission or the director deems it appropriate.
- (3) If, after an inspection, staff believes that further information is needed to determine appropriate action, staff may send a request for specific information to the owner or operator. The owner or operator shall answer the request within thirty (30) days of its receipt.
- (4) The commission may, subject to applicable laws, require testing of portions of facilities that have been involved in, or affected by, an accident. The commission shall make every effort to negotiate with the owner or operator of the facility a mutually acceptable plan for performing the testing.
- (5) When the information obtained from an inspection or from other appropriate sources indicates that further commission action is warranted, the director shall issue a notice of probable violation or notice of intent to issue a hazardous facility order, as appropriate.

B. Excavation. A one-call notification system, underground facility operator, excavator, or project owner, as appropriate, shall, upon reasonable notice and presentation of identification, grant staff access to:

- (1) an excavation site for the purpose of previewing, observing, or examining an excavation activity;
- (2) all records pertaining to an excavation activity that are in the possession of the one-call notification system, underground facility operator, excavator, or project owner.

[18.60.4.8 NMAC - Rp, 18.60.2.9 NMAC, 7-17-06]

18.60.4.9 SERVICE OF PROCESS: Whenever this rule requires notice or other process to be served on a respondent, the notice or other process shall be served at the last known address of the respondent.
[18.60.4.9 NMAC - Rp, 18.60.2.10 NMAC, 7-17-06]

18.60.4.10 NOTICE OF PROBABLE VIOLATION:

A. Except as otherwise provided in Section 70-3-19 NMSA 1978, the director shall begin an enforcement proceeding by serving a notice of probable violation on the respondent.

B. The director may serve a notice of probable violation of applicable laws through staff on the respondent or the respondent's agent at an excavation site. In such case, the director shall also serve the notice of probable violation by mail on the respondent as prescribed in 18.60.4.9 NMAC.

C. A notice of probable violation shall include a statement of those provisions of applicable laws that the respondent is alleged to have violated, a statement of the evidence upon which the allegations are based, a statement that the respondent may request a settlement conference within fifteen (15) days of receipt of the notice of probable violation, and instructions regarding how the respondent may request a settlement conference. A respondent shall respond to the allegations in writing within fifteen (15) days of receipt of the notice of probable violation. The director may, in his discretion and in accordance with applicable laws, grant or deny a request for a settlement conference.

D. If, in his discretion, the director determines that a settlement conference would be useful, the notice of probable violation shall also contain a date, time and location for a settlement conference, and a statement that if the respondent fails to appear for the settlement conference, the respondent will be deemed to have admitted the violation.

E. The director may amend a notice of probable violation at any time prior to issuance of a final order.

[18.60.4.10 NMAC - Rp, 18.60.2.11 NMAC, 7-17-06]

18.60.4.11 ATTORNEY REPRESENTATION. In settlement conferences, dispositional hearings, commission hearings conducted pursuant to this rule, and arbitrations and mediations conducted pursuant to 18.60.5 NMAC, respondents shall be represented as provided in this section.

A. An individual or sole proprietorship shall appear in person on his or her own behalf or may be represented by an attorney.

B. A partnership with fewer than ten (10) partners, whether limited or general, who are all natural persons, may appear and be represented by an attorney or by a general partner or manager who has been authorized by the general partnership to do so.

C. A limited liability company with fewer than ten (10) members, who are all natural persons, may appear and be represented by an attorney or by a manager or member who has been authorized by the limited liability company to do so.

D. A corporation whose voting shares are held by a single shareholder or closely knit group of shareholders who are all natural persons active in the operation of the business may appear and be represented by an attorney or by an officer or manager who has been authorized by the corporation to do so.

E. All other persons shall be represented by an attorney.

[18.60.4.11 NMAC - N, 7-17-06]

18.60.4.12 SETTLEMENT CONFERENCES: The director may conduct a settlement conference with the respondent at the date, time and in the manner set forth in the notice of probable violation, or at such other time agreed to by the director and the respondent. At the settlement conference, the director shall explore with the respondent the facts of the probable violation and the possibility of reaching an agreed upon resolution, which may include dismissal or a voluntary settlement agreement with administrative or civil penalties or other sanctions.

A. Voluntary dismissal. If the director and respondent agree to dismiss the notice of probable violation, the director shall issue a letter dismissing the probable violation which shall resolve the matter.

B. Voluntary settlement agreement. If the director and respondent agree to settle, the director and respondent shall enter into and sign a written settlement agreement which shall resolve the matter. The written settlement agreement shall include any administrative or civil penalties or other sanctions and the respondent's knowing waiver of his right to a formal hearing.

C. Failure to settle. If the respondent appears at the settlement conference but does not agree to terms and conditions that are satisfactory to the director, the director may request a hearing before the commission

pursuant to 18.60.4.14 NMAC or file a petition in district court for injunctive action.

D. Failure to appear. If the respondent fails to appear for the settlement conference, the respondent will be deemed to have admitted the violation. Within ten (10) days, the director may serve on respondent a determination of violation. The determination shall include notice of the respondent's right to appeal pursuant to 18.60.4.14 NMAC and may include notice of a dispositional hearing pursuant to 18.60.4.13 NMAC.

E. Alternative procedures. The director may give notice of a dispositional hearing, request a hearing before the commission, or file a petition in district court for injunctive action without offering to hold a settlement conference.

[18.60.4.12 NMAC - Rp, 18.60.2.12 NMAC, 7-17-06]

18.60.4.13 DISPOSITIONAL HEARINGS:

A. Notice. Not less than twenty (20) days prior to the date of the dispositional hearing, the director shall serve on the respondent notice of the dispositional hearing and copies of the notice of probable violation, staff's inspection reports, and any third party complaints or damage reports by mail as prescribed by 18.60.4.9 NMAC. The notice shall state in boldface type that failure to appear at the dispositional hearing may result in the issuance of a default disposition and administrative or civil penalties or other sanctions.

B. Procedures.

(1) The director shall appoint a person or a panel to hear the case, or may hear the case himself or herself.

(2) The dispositional hearing shall be recorded by mechanical or electronic means and the director, or person or panel conducting the hearing, shall determine if the record shall be transcribed.

(3) If the director does not hear the case himself or herself, the person or panel conducting the dispositional hearing shall issue a recommended disposition to the director setting forth findings of fact, the amount of any administrative or civil penalties, and any other sanctions.

C. Disposition. The director shall promptly act on the recommended disposition. The director's disposition shall include:

(1) findings of fact;

(2) the amount of the penalty and the procedure for its payment, if an administrative or civil penalty is assessed;

(3) a statement of the actions required to be taken by the respondent and the time by which each action must be accomplished; and

(4) a statement that the respondent may appeal the director's disposition by filing a request for a hearing before the commission pursuant to 18.60.4.14 NMAC.

D. Failure to appear. If the respondent fails to appear for the dispositional hearing, the director may issue a default disposition, which may include administrative or civil penalties or other sanctions.

[18.60.4.13 NMAC - N, 7-17-06]

18.60.4.14 HEARINGS BEFORE THE COMMISSION:

A. Request for hearing.

(1) **By the director.** At any time after the notice of probable violation has been served on the respondent, the director may request a hearing before the commission.

(2) **By the respondent.** A respondent may appeal a determination made by the director pursuant to Subsection D of 18.60.4.12 NMAC or a disposition made by the director pursuant to 18.60.4.13 NMAC by filing a request for hearing before the commission. The respondent shall file the appeal with the docket filing unit of the commission within thirty (30) days of the date the director's determination or disposition is mailed to the respondent. The appeal shall be in writing and signed by the respondent and shall set forth the factual basis for the appeal and the nature of the relief requested. An appeal may request a stay of the director's determination or disposition pending a decision of the commission.

B. Notice of hearing. The commission shall:

(1) fix a time and location for a public hearing on the alleged violations; and

(2) serve notice of the hearing upon the respondent by mail as prescribed by 18.60.4.9 NMAC not less than ten (10) days prior to the date of the hearing with copies of the notice of probable violation, staff's inspection reports, and any third party complaints or damage reports. The notice shall state in boldface type that failure to appear at the hearing may result in a default judgment and the imposition of administrative or civil penalties or other sanctions.

C. Hearing procedures. The commission may appoint a hearing examiner or may hear the matter

itself. The commission or hearing examiner shall conduct the hearing in accordance with the PRC rules of procedure. If a hearing examiner conducts the hearing, the hearing examiner shall submit to the commission a recommended decision with findings of fact and conclusions of law.

[18.60.4.14 NMAC - Rp, 18.60.2.13 and 18.60.2.14 NMAC, 7-17-06]

18.60.4.15 STIPULATION:

A. At any time before the issuance of a final order, the director and the respondent may agree to resolve a case by stipulation. The stipulation may include assessment or waiver of a civil or administrative penalty or other sanctions.

B. A stipulation shall include:

- (1) an admission by the respondent of all jurisdictional facts;
- (2) an express waiver of the right to pursue further procedural remedies before the commission and of the right to seek judicial review or otherwise challenge or contest the validity of the stipulation;
- (3) an acknowledgement that the notice of probable violation may be used to construe the terms of the stipulation;
- (4) an acknowledgement that the stipulation will be considered a violation for purposes of penalties for subsequent violations; and
- (5) a statement of the actions to be taken by the respondent and the time by which each action shall be accomplished.

C. If a case is resolved by stipulation, staff shall file a motion requesting approval of the stipulation and closing of the case.

[18.60.4.15 NMAC - Rp, 18.60.2.15 NMAC, 7-17-06]

18.60.4.16 FINAL ORDER: After a hearing, and the consideration of any exceptions pursuant to the PRC rules of procedure, the commission shall issue a final order that includes:

A. findings of fact and conclusions of law;

B. the amount of the penalty and the procedure for its payment, if a civil or administrative penalty is assessed; and

C. a statement of the actions required to be taken by the respondent and the time by which each action must be accomplished.

[18.60.4.16 NMAC - Rp, 18.60.2.16 NMAC, 7-17-06]

18.60.4.17 PAYMENT OF PENALTY:

A. A respondent shall pay an administrative or civil penalty agreed to in a voluntary settlement agreement or assessed in a director's disposition or commission final order by certified check or money order made payable to the New Mexico Public Regulation Commission and shall submit the payment to the address provided by the commission.

B. If a respondent fails to pay the full amount of an administrative or civil penalty within twenty (20) days of receipt of a director's disposition or commission final order, or other time frame specified in the disposition or order, the commission or director may file an action in district court to collect the assessed penalty.

[18.60.4.17 NMAC - Rp, 18.60.2.17 NMAC, 7-17-06]

18.60.4.18 REFERRAL FOR PROSECUTION: If an employee of the transportation division of the New Mexico public regulation commission becomes aware of any actual or possible activity subject to criminal penalties under Section 70-3-19 NMSA 1978, the employee shall report such actual or possible activity to the office of the attorney general for the state of New Mexico.

[18.60.4.18 NMAC - Rp, 18.60.2.26 NMAC, 7-17-06]

History of 18.60.4 NMAC:

Pre-NMAC History: The material in this rule was derived from that previously filed with the Commission of Public Records-State Records Center and Archives.

SCC 69-29, Order No. 2966, Cause No.516, filed 9-24-69.

SCC 71-2, Amended Order No. 2966, Cause No.516, filed 3-18-71.

SCC 72-1, Amended Order No. 3096, Cause No.516, filed 1-12-72.

SCC 77-2, Order No. 3096-C, Docket No.750, filed 3-04-77.

SCC 79-4, Regulations Relating to Minimum Safety Standards for the Transportation of Natural and other Gas by Pipeline, filed 6-27-79.

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84.

History of Repealed Material: 18 NMAC 60.1, General Provisions; 18 NMAC 60.2, Reports Required for New Master Meters and Third Party Damage; 18 NMAC 60.3, Requirement of Filing of Procedural Manual; 18 NMAC 60.4, Classification and Repair of Leaks; 18 NMAC 60.5, Pipeline Safety Program Procedures; 18 NMAC 60.6, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards: Annual and Incident Reports; 18 NMAC 60.7, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 18 NMAC 60.8, Transportation of Hazardous Liquids by Pipeline; 18 NMAC 60.9, Pipeline Safety Regulations: Drugs & Alcohol Testing; 18 NMAC 60.10, Procedures for Transportation Workplace Drug & Alcohol Testing Programs (all filed 5-1-96) repealed 7-1-03.

Other History:

SCC 84-9-PL, Regulation for the Transportation of Natural and other Gas by Pipeline - Minimum Standards, filed 11-26-84, was renumbered into first version of the New Mexico Administrative Code as 18 NMAC 60.1 through 18 NMAC 60.10, effective 6-5-96.

18 NMAC 60.1 through 18 NMAC 60.10 (all filed 5-1-96), were replaced by 18.60.2 NMAC, Pipeline Safety, effective 7-1-03.

Those **applicable portions** of 18.60.2 NMAC, Pipeline Safety (filed 6-16-2003) replaced by 18.60.4 NMAC, Pipeline Safety Enforcement Procedures, effective 7-17-06.