

2 Criminal Enforcement and OIG Coordination

This section provides guidance for communicating within PHMSA and with the DOT Office of Inspector General (OIG) when criminal activity related to a regulated pipeline system is suspected. Enforcement of the Federal Pipeline Safety Laws and regulations is an integrated process involving all levels of government, public and private actions, and civil and criminal remedies. PHMSA staff should be aware of the many different legal avenues available to the agency and other stakeholders to achieve PHMSA’s safety and environmental mission.

If allegations of either civil or criminal safety violations are reported to OPS by a pipeline industry employee and the employee is alleging retaliation by the operator, then PHMSA interaction with the reporting employee will also be guided by the Pipeline Whistleblower Policy (<https://usdot.sharepoint.com/sites/phmsa-PHP7/PHPPolicies/Forms/AllItems.aspx>).

The purpose of this section is to provide PHMSA personnel with practical guidance on when one might consider referring information to OIG based on findings of an inspection or investigation.

This section is divided into three parts:

Section 2.1 covers criminal activity and defines types of activity that may lead an inspector to consider referral of cases for further PHMSA Office of Chief Counsel (PHC) or OIG review;

Section 2.2 covers procedures for reporting and communicating potential criminal activity; and

Section 2.3 addresses the responsibility of OIG and PHMSA coordination once a case is referred or self-initiated by OIG.

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2.1 Criminal Activity

This procedure deals with persons who may have willfully violated Federal Pipeline Safety Laws and regulations. This procedure does not apply to allegations of safety violations without suspected criminal conduct.

2.1.1 Potential Criminal Acts

The key difference between civil and most criminal violations is the intent of the person committing the act. Under the Pipeline Safety Act, it is generally necessary to prove that the person (or company) “knowingly and willfully” violated the law. The term “knowingly” generally means that an individual simply knows or is aware of what he is doing, not that he knows his actions are illegal. The term “willfully” generally means that a person’s actions are voluntary and deliberate, not accidental or simply negligent.

2.1.1.1 What potential crimes are you mostly likely to encounter?

There are three main categories¹ of potential criminal acts that you may encounter:

- 1) Federal Pipeline Safety Law violations – It is a federal crime for any “person” including any individual, company, pipeline owner, pipeline operator, contractor, or agent of such person, to willfully and knowingly:
 - a. Fail to comply with any safety standard or regulation under 49 CFR Parts 190-199 or any order issued by PHMSA;
 - b. Injure or destroy, or attempt to injure or destroy, any interstate transmission facility, any interstate pipeline facility, or any intrastate pipeline facility used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce²;

¹ There are a number of other crimes that may be encountered as part of pipeline enforcement, including: bribery (18 USC § 666); mail fraud (18 USC § 1341); and false claims (31 USC § 3729).

² OIG has requested that PHMSA immediately report any evidence of a physical or cyber attack against a pipeline. If Region Staff discovers such evidence, Region staff must coordinate reporting with the PHC and PHP-5 as soon as possible.

- c. Deface, damage, remove, or destroy any pipeline sign, right-of-way, marker, or marine buoy;
 - d. Excavate without using a one-call system or without paying attention to appropriate location information or markings, where such failure subsequently results in damage to a pipeline resulting in death, serious bodily harm, or property damage exceeding \$50,000, or where such failure damages a pipeline facility and the damage is not promptly reported to the operator and appropriate authorities, or such failure subsequently damages a hazardous liquid pipeline facility that results in the release of more than 50 barrels of product;
 - e. Fail to mark pipeline facilities when notified under a state damage prevention program;
 - f. Refuse to provide information to PHMSA inspectors, to allow them access to or copy records, or to allow them access to inspect pipeline facilities; or
 - g. Dump solid waste within the right-of-way of any interstate pipeline facility, or any other limited area in the vicinity of any interstate pipeline facility established by the Secretary.
- 2) False statements – It is a federal crime for any person to “knowingly and willfully” make any materially false statement or fraudulent claims, statements, or certifications to falsify or conceal a material fact, or to make or use any false writing or record “knowing the same to contain any materially false” statement or entry, to a federal agency.
- 3) Conspiracy to commit offense – 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.

2.1.1.2 What constitutes proof of one of these crimes?

To prove most crimes, it is essential to show that a person possessed the requisite intent to engage in the criminal behavior. Criminal violations also require a higher standard of proof (i.e. beyond a reasonable doubt) than is necessary to establish civil liability or regulatory violations. PHMSA employees are not criminal investigators and are not expected to conduct criminal investigations or to prove potential criminal activity. Criminal investigations often require special skills and legal resources (e.g., subpoenas) to prove all the elements of a particular crime and are best left in the hands of law enforcement personnel, including OIG.

2.2 Communicating Potential Criminal Activity

If PHMSA personnel suspect that a crime may have been committed, the agency must refer the matter to OIG for evaluation or investigation. This is true even if PHMSA is also conducting its own administrative investigation or pursuing other civil enforcement action.

The Chief Counsel will designate an attorney in PHC (PHC Liaison) to serve as the primary point of contact between PHMSA and OIG on all criminal investigations and referrals to OIG. The PHC Liaison will track and keep a record of all criminal referrals to OIG. The PHC Liaison will regularly consult and update the Deputy Associate Administrator for Field Operations, or their designee, on OIG case referrals.

2.2.1 Discovery during Pipeline Safety Inspections or Investigations

In those situations where PHMSA personnel during the course of an inspection or investigation suspect that a crime involving regulated pipelines may have been committed, documentation of any evidence should be maintained. The PHMSA personnel should contact their Office Director and the PHMSA Office of Chief Counsel. Office Directors will notify the Deputy Associate Administrator for Field Operations when suspicions of criminal activity have been sent to PHC. PHMSA employees must ensure that investigative matters within the purview of OIG are promptly referred for disposition in accordance with the procedures in DOT Order 8000.8A. PHMSA personnel also have the option of making a direct referral to the Inspector General via the OIG hotline at 800-424-9071, at <https://www.oig.dot.gov/hotline>, by email at hotline@oig.dot.gov, or by mail to the Office of Inspector General, 1200 New Jersey Avenue, S.E., West Building, 7th Floor, Washington, D.C. 20590.

If at any time an employee has a question about a potential criminal matter, they should contact an attorney in the PHMSA Office of Chief Counsel for assistance.

2.2.1.1 What is PHC's role in referring potential criminal cases?

If PHC receives information about potential criminal activity, an attorney from that office will consult with the source, the Office Director, and other appropriate officials, conduct legal research if necessary, and compile relevant information and records. Any review or analysis undertaken in support of a referral of a potential criminal matter, such as developing facts, documenting evidence, or preparing a memorandum of law, must be completed expeditiously, and the underlying information concerning the potential criminal matter must be safeguarded and restricted to officials who have a "need to know." Referrals to OIG should be prompt and without alteration. PHMSA may provide additional information to supplement the referral. The PHC Liaison will refer the matter to the OIG Liaison or to the OIG Hotline at hotline@oig.dot.gov. If the Chief Counsel determines that the matter should be referred directly to the Chief Counsel of OIG, the Chief Counsel will make the referral. PHC will take the lead in monitoring and coordinating PHMSA support of OIG investigations and in advising the Administrator concerning criminal investigations arising out of PHMSA enforcement activities.

2.2.2 **OIG Hotline Complaints**

The DOT OIG operates a telephone Hotline (1-800-424-9071) to receive complaints from DOT employees and the general public to report waste, fraud, and abuse in government programs and to report violations of federal laws and regulations. This line sometimes receives complaints alleging safety issues that affect PHMSA-regulated pipelines. The OIG Complaint Center screens these complaints and periodically sends them to PHMSA for appropriate action. OIG typically sends this information to the Regulatory Support Analyst in OPA, who further coordinates with PHC and the Deputy Associate Administrator for Field Operations.

2.2.2.1 **Who coordinates complaints once received within OPS?**

The Regulatory Support Analyst in OPA, when notified by OIG of a pipeline-related safety complaint, will provide a copy to the PHC Liaison and the Deputy Associate Administrator for Field Operations, who in turn will request the appropriate Office Director gather information about the complaint. If a PHMSA employee suspects that there may be potential criminal activity involved, that person should promptly report it to their Office Director and the Office of Chief Counsel for further action, as outlined in section 2.2.1 above, including direct referral to OIG.

2.3 **Office of Inspector General**

OIG has responsibility for conducting investigations under the Inspector General Act of 1978, including allegations that persons have engaged in fraudulent or other criminal activity relating to DOT programs and operations. With a limited exception, which does not apply to PHMSA operations, OIG is the only DOT organization authorized to conduct criminal investigations.

2.3.1 **Coordination with PHMSA**

OIG seeks to maintain a close working relationship with PHMSA headquarters and the Region Offices. As part of this effort, OIG has requested that PHC provide the earliest notification possible of major pipeline accidents and other incidents that are likely to receive extensive public attention or that could potentially involve criminal violations.

2.3.1.1 **How does OIG initiate a criminal investigation involving a pipeline?**

OIG has many sources from which it may acquire information leading to criminal investigations of a PHMSA-regulated pipeline. While OIG does not have an obligation to reveal its sources to PHMSA or any other DOT mode, OIG will notify PHMSA if OIG initiates a criminal investigation and will keep PHMSA informed of significant milestones in the investigation and the outcome of the investigation, unless DOJ requests that OIG delay notification. In all such investigations, protecting public safety is of paramount consideration. OIG Field Offices may make preliminary inquiries of an OPS Office regarding a particular operator or incident and may

request other assistance from OPS in an investigation. Office Directors will cooperate fully with any such inquiries and report them to PHC and the Deputy Associate Administrator for Field Operations in a timely manner.

2.3.1.2 May PHMSA still pursue an administrative enforcement case?

If PHMSA suspects possible criminal activity and refers a case to OIG for criminal investigation, PHMSA may still pursue its own regulatory enforcement action.³ In such cases, PHMSA should keep OIG informed of the progress of its administrative case. Occasionally, OIG may request PHMSA to hold a regulatory compliance activity in abeyance if continuation could affect the viability of criminal enforcement efforts.

2.3.1.3 What if PHMSA and OIG disagree on initiating a criminal investigation?

If PHMSA and OIG disagree with regard to the initiation of a criminal investigation, referral of a matter to DOJ, or whether regulatory compliance activity or civil enforcement proceedings should be held in abeyance, the matter shall be raised to the headquarters level of each organization for resolution. In reaching resolution within the Department, OIG or PHMSA may request participation by OGC or they may jointly inform and seek advice from DOJ.

2.3.1.4 How can someone find out the status of an OIG investigation?

OIG provides quarterly updates for active cases to the PHC Liaison and the updates are available on the PHC SharePoint to PHC employees, or upon request by PHP. In addition, the Deputy Associate Administrator for Field Operations, or their designee, maintains communication with Office Directors and PHC to ascertain the most recent update of all OIG investigations, preliminary inquiries, and Hotline complaints. Significant developments such as, indictments, convictions, and sentencings are listed on the DOT OIG website:

<https://www.oig.dot.gov/investigations>.

³ See subsection 3.1.1 in Section 3 of the Enforcement Procedures.