



Procedure SSO-004

Enforcement Escalation Procedure

Current Version: 10/1/2021

Scope: This procedure explains the process that the NJDOT SSO program uses to track potential unmitigated safety (or security) risk at the RTA/RFGPTS, under the jurisdiction of New Jersey, and interactions to assure that these potential unmitigated safety (or security) risks are appropriately addressed. The focus for this procedure is on how the NJDOT SSO program may escalate this type of situation if there are disagreements or a lack of responsiveness from the RTA/RFGPTS. This escalation of enforcement may provide a remedy through the New Jersey Attorney General's office should an RTA/RFGPTS be unresponsive to resolving issues required by the NJ DOT SSO program.

New Jersey Enforcement Generally: New Jersey Statute Annotated, N.J.S.A. 48:2-15(b) provides the NJDOT with the authority to regulate the RTA/RFGPTS including the regulation of the adequacy of service and safety of operation and equipment. The NJDOT SSO program has enforcement authority in administrative code N.J.A.C. 16:53E.

Background – Hazard Management and Risk Monitoring: With limited budgets and resources, the NJDOT SSO program focuses on issues that have been identified through safety event notifications and investigations, audit results, and risk monitoring of various safety and security related activities and issues. For each of the New Jersey RTAs/RFGPTS, there is a list of hazard and mitigation topics that are tracked and monitored to assure that mitigation is working as intended, and no new risk has been introduced by that mitigation.

Prioritization of hazard/risk issues is based on a concept of if you see or become aware of one issue/concern that might become a hazard, it is noted and tracked. If the potential hazard is observed (or reported) a second time, then it is tracked as a potential unmitigated risk that needs more attention. If observed (or reported) a third time, the response is escalated to an onsite visit to conduct interviews and collect relevant data, such as through inspections. This approach is used by the NJDOT SSO program to manage the limited resources for tracking potentially unmitigated risk. If at any time the potential hazard becomes a significant hazardous condition, the NJDOT SSO program will work with the RTA/RFGPTS Safety Department to respond right away. This is an ongoing or continuous process of tracking, analysis, observing, and communicating with each RTA/RFGPTS to be aware of the risk environment. **One extremely important and related issue is that the RTA/RFGPTS must always own their own risk, not the NJDOT SSO program**, so care is required in this process to assure responsibility of the RTA/RFGPTS for managing and mitigating its own risk.

Failure to mitigate a risk will result in a Notice of Violation (NOV). A NOV will be classified as either Administrative or Operational.

Administrative violations will result from an RTA/RFGPTS failing to meet any procedure that is in the NJDOT State Standards or the Agency Safety Plan (ASP) that is developed by the RTA/RFGPTS and approved by the SSO agency.



Operating violations will relate to the movement and maintenance of a rail vehicle, mobile and fixed maintenance equipment, and all related appurtenances in conflict with RTA/RFGPTS established procedures, rules, or original equipment manufacturers (OEM) guidelines.

Enforcement

(1) Administrative NOV's

The SSO program manager will formally document an administrative NOV to the CSO. After receipt of the notice, the CSO has 30 days to address and correct the violation. If the violation is not addressed, a second NOV will be issued to the Accountable Executive. If after 30 days the NOV is not addressed or corrected, the SSO manager will send a letter to the Board of Directors requesting assistance in compelling the RTA/RFGPTS to correct the violation.

(2) Operational NOV's

Once the NJDOT SSO program staff identify something that appears to be a potentially significant hazardous condition, this situation is discussed directly with the CSO. Often, several issues are discovered at the same time and considered important for RTA/RFGPTS attention and resolution. These risk-related issues are typically, and almost always, resolved at this level of discussion and interaction. The NJDOT SSO program staff documents these observations, inspections, interviews, planned resolutions, and continues to monitor for resolution and whether or not the risk issues are properly resolved over time.

First Notice of Hazardous Condition. If, after some appropriate period of time, the NJDOT SSO program staff continue to observe a pattern of potentially significant risk issues already communicated, formal communication will be made with the CSO. An NOV will be issued from the NJDOT SSO program to the CSO. This letter provides the risk issues that were of concern to the NJDOT SSO program staff with a formal request of corrective action plan within 10 to 30 days (depending on the complexity of the identified hazard) including an explanation of how the RTA/RFGPTS plans to address the identified concerns. If the explanations from the RTA/RFGPTS are reasonable/acceptable, the issues and responses are documented, and risk monitoring continues.

Second Notice of Hazardous Condition. If, after some appropriate period of time, the NJDOT SSO program staff continue to observe a pattern of potentially significant risk issues already communicated to the CSO, further communication will be made with the Accountable Executive. This is typically performed through a formal letter from the NJDOT senior management to the Accountable Executive. This letter provides the risk issues that were of concern to the NJDOT SSO program staff with a formal request to respond to the letter including an explanation of how the RTA/RFGPTS plans to address the identified concerns from the NJDOT SSO program. If the explanations from the Accountable Executive are reasonable/acceptable, the issues and responses are documented, and risk monitoring continues. If the NJDOT SSO program determines that the identified risk issues need more attention, then the NJDOT SSO program requires the RTA/RFGPTS to develop appropriate corrective actions that are agreed to and then tracked to completion. The response to a letter from the NJDOT SSO program might require a response from one to four weeks depending on the complexity of the identified risks.



Final Notice of Hazardous Condition. Based on the requirements in New Jersey Administrative Code (N.J.A.C.) 16:53E-2.1, if the Accountable Executive does not properly respond (in scope or timeframe) to requests and direction provided by the NJDOT senior management in terms of risk identification and proper resolution, the ultimate responsibility for enforcement will escalate over some period of time to the New Jersey Attorney General’s Office for enforcement of the NJDOT’s NOV.

Immediate Enforcement Due to Imminent Threat to Public Safety. If at any time the NJDOT SSO Program staff become aware of an Imminent Threat to Public Safety at a New Jersey RTA/RFGPTS, immediate communications between NJDOT Office of Fixed Guideway management and the CSO (and other appropriate RTA/RFGPTS departments, as needed) will determine if the threat is truly imminent and what the next steps might be. If the NJDOT SSO Manager and NJDOT Commissioner’s designee concur on severity of the threat, immediate actions to address the imminent threat to public safety up to and including removing RTA/RFGPTS equipment from service or ultimately shutting down the rail system at the RTA/RFGPTS, under the jurisdiction of New Jersey, will be ordered.

Update:

- March 5, 2018 – Initial release
- October 1, 2021 – minor word choice edits & communication with CSO; replaced Rail Property with RFGPTS