



U.S. Department  
of Transportation  
**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

December 9, 2020

Via Email

Mr. James P. Griffin  
Chair  
Hawaii Public Utilities Commission  
465 South King Street, Room 103  
Honolulu, Hawaii, 96813

Dear Commissioner Griffin:

On December 1, 2020, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the Hawaii Public Utilities Commission's (HPUC) enforcement of the Hawaii State excavation damage prevention law. PHMSA conducted this evaluation pursuant to 49 United States Code (USC) § 60114 and 49 Code of Federal Regulations (CFR) Part 198, Subpart D—State Damage Prevention Enforcement Programs. Based on this evaluation, PHMSA has determined that the enforcement of the Hawaii excavation damage prevention law is “adequate.”

PHMSA evaluates a state's excavation damage prevention enforcement program based on the criteria detailed in 49 CFR 198.55 and scores the state's compliance with those criteria. Although HPUC's enforcement program was deemed “adequate” for calendar year (CY) 2019, this is not a finding by PHMSA that the state program has no room to further improve the program's effectiveness. Accordingly, PHMSA would like to bring to your attention an area of improvement involving the requirements of 49 CFR 198.55(a)(6)(iii)(B). This is one of the evaluation criteria for a state's program and assesses if state law requires an excavator who causes damage to a PHMSA-regulated pipeline that results in a release of natural or other gas or hazardous liquid to promptly report the release to emergency responders by calling the 911 emergency telephone number or another emergency telephone number. Hawaii's one call law, specifically, HRS §269E-12(f), does require a 911 call, but allows an excavator the opportunity to evaluate if the damage to a subsurface installation creates an emergency situation. The statutory mandate found in 49 USC 60114(d)(3)(b), which is codified at 49 CFR 198.55(a)(6)(iii)(B) expressly requires an excavator “must promptly report to other appropriate authorities by calling the 911 emergency telephone number” if the “damage results in the escape of any flammable, toxic, or corrosive gas or liquid.” PHMSA encourages the HPUC to evaluate how it may improve its program in this regard and provide an update to PHMSA relative to this issue within 60 days from receipt of this letter.

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PHMSA appreciates your dedication to safety. As you are aware, excavation damage continues to be a leading cause of pipeline failures, some of which have resulted in fatalities, serious injuries, and environmental damage. Nationwide statistics show that effective enforcement of state damage prevention laws reduces excavation damage and pipeline incidents, resulting in enhanced public safety.

Should you or your staff have any questions regarding this letter, please contact David Appelbaum, PHMSA State Evaluator, at (202) 617-6329 or by email at David.Appelbaum@dot.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Massoud Tahamtani", with a long, sweeping underline that extends to the right.

Massoud Tahamtani  
Deputy Associate Administrator, Policy and Programs  
Office of Pipeline Safety

cc: David Mattice, District Representative, Consumer Affairs and Compliance,  
Hawaii Public Utilities Commission