



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

**1200 New Jersey Avenue, SE
Washington, DC 20590**

December 4, 2020

Via Email

Ms. Megan Decker
Chair
Oregon Public Utility Commission
201 High Street SE, Suite 100
Salem, OR 97301

Dear Chair Decker:

On November 13, 2020, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the Oregon Public Utility Commission's (OPUC) enforcement of the Oregon 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 Oregon 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 OPUC'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)(5). The preamble to the final rule for this requirement contains PHMSA's guidance for how it applies this section when evaluating a state program. PHMSA expects state enforcement programs to be balanced with regard to how they apply enforcement authority. Although review of this criterion will not, by itself, render a state enforcement program inadequate, PHMSA seeks a patterns of enforcement activity that demonstrate that penalties are applied to the responsible party or parties in excavation damage incidents and not consistently to only one stakeholder group.

In consideration of the above, a state's enforcement should focus on the compliance responsibilities of excavators, pipeline operators and others involved in the process. In CY 2019, Oregon's gas distribution operators reported a total of 811 excavation damages to their pipeline facilities in the annual reports submitted to PHMSA. Of these 811 excavation damages, 137 were attributed to pipeline operators for not having complied with their responsibilities in accordance

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with Oregon's one-call law. The OPUC assessed nine civil penalties in CY 2019, all of which were against the excavators. Furthermore, the OPUC has not assessed a civil penalty against an operator for a one-call violation since CY 2016, even though trends have shown that operators are responsible for approximately fifteen percent of excavation damages to distribution gas pipelines. PHMSA encourages the OPUC 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.

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 'M. Tahamtani', with a long, sweeping horizontal line extending to the right.

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

cc: Kevin Hennessy, Director, Chief of Pipeline Safety, Oregon Public Utility Commission