



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

1200 New Jersey Avenue, SE  
Washington, DC 20590

August 30, 2023

Via Email

Mr. Michael Marchland  
Executive Director  
Arkansas Public Service Commission  
PO Box 400  
Little Rock, AR 72203

Dear Executive Director Marchland:

On July 31, 2023, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the Arkansas Public Service Commission's (APSC) enforcement of the Arkansas 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 Arkansas 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 APSC's enforcement program was deemed "adequate" for calendar year (CY) 2022, 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)(3). This is one of the evaluation criteria for a state's program and assesses, in part, whether the state is "assessing civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance." In CY 2022, Arkansas' gas distribution operators reported a total of 2,115 excavation damages to their pipeline facilities in the annual reports submitted to PHMSA. Based on the information gained during our evaluation, only 220 of these offenders received a warning letter. It has been the practice of the APSC to issue warning letters as an alternative sanction in lieu of civil penalties. The number of warning letters issued in CY 2022 reflects a substantial decline in enforcement activity from years past, notwithstanding the steady increase in excavation damages.

In addition to the 2,115 excavation damages reported, no enforcement actions were pursued for the 724 excavation damages where the apparent root cause was attributed to pipeline operators for not having complied with their responsibilities in accordance with Arkansas' Underground Facilities Damage Prevention Act. This conflicts with the requirements of 49 CFR 198.55(a)(5), wherein, PHMSA expects state enforcement programs to be balanced with regard to how they apply their enforcement authority.

On December 9, 2020, PHMSA communicated these similar concerns. In our view, and specific to PHMSA-regulated facilities, there has been no demonstrative increase in the application of effective enforcement processes and no discernable improvement in excavation safety since then. PHMSA does not typically deem a program “inadequate” based on this criterion alone. However, a finding of inadequacy is based on the totality of the review of a program, including its history in properly implementing the criteria described in 49 CFR § 198.55(a)(5) and appropriately responding to PHMSA’s prior identification of areas in need of improvement. Therefore, to avoid a potential determination of “inadequacy” in the future, PHMSA encourages the APSC to evaluate how it may improve its program and provide an update to PHMSA relative to these issues within 60 days from receipt of this letter.

PHMSA appreciates your dedication to pipeline safety. As you are aware, excavation damage continues to be a leading cause of pipeline failures, some of which result 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 Mr. David Appelbaum, PHMSA State Evaluator, at (202) 617-6329 or by email at David.Appelbaum@dot.gov.

Sincerely,



Zach Barrett  
Director, State Programs

cc: Jason Donham, Pipeline Safety Program Manager, APSC