



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

1200 New Jersey Avenue, SE
Washington, DC 20590

October 24, 2023

Via Email

Ms. Jodi Endo Chai
Executive Officer
Hawaii Public Utilities Commission
465 South King Street, Room 103
Honolulu, HI, 96813

Dear Executive Officer Endo Chai:

On August 31, 2023, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of 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 Hawaii PUC'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)(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 its enforcement authority. In consideration of the above, a state's enforcement should focus on the compliance responsibilities of excavators, utility owners and pipeline operators. In CY 2022, Hawaii's gas distribution operators reported a total of 116 excavation damages to their pipeline facilities in the annual reports submitted to PHMSA, of which, 7 were attributed to pipeline operators for not having complied with their responsibilities in accordance with Hawaii Revised Statutes (HRS), specifically, HRS § 269E-9. Though HPUC received 114 complaints for violations of the Act, and appropriately issued 3 civil penalties, none of the enforcement actions taken were against the pipeline operator.

In our view, and specific to PHMSA-regulated facilities, there has been no demonstrative increase in the application of equitable enforcement. 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) 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 HPUC 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,

A handwritten signature in blue ink, appearing to read "Zach Barrett", with a long, sweeping flourish extending to the right.

Zach Barrett
Director, State Programs

cc: Mr. David Mattice, District Representative, Interim Consumer Affairs and Compliance Officer, Hawaii Public Utilities Commission