



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

1200 New Jersey Avenue, SE
Washington, DC 20590

October 12, 2023

Via Email

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

Dear Chair Decker:

On October 11, 2023, 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 the OPUC'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, Oregon's gas distribution operators reported a total of 807 excavation damages to their pipeline facilities in the annual reports submitted to PHMSA, of which, 129 of were attributed to pipeline operators for not having complied with their responsibilities in accordance with Oregon's excavation damage prevention law. Though OPUC received 36 complaints for violations of the one-call law, and appropriately issued 19 civil penalties, none of the enforcement actions taken were against pipeline operators.

On November 4, 2021, PHMSA communicated these similar concerns. In our view, and specific to PHMSA-regulated facilities, there has been no demonstrative increase in the application of equitable enforcement 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) 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 OPUC 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 stylized flourish extending from the end.

Zach Barrett
Director, State Programs

cc: Kevin Hennessy, Director, Chief of Pipeline Safety, OPUC