



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

SEP 01 2016

1200 New Jersey Ave., S.E.  
Washington, DC 20590

**OVERNIGHT EXPRESS MAIL**

Mr. Brandon Presley  
Chairman  
Mississippi Public Service Commission  
501 North West Street  
Jackson, MS 39201-1174

Dear Chairman Presley:

On February 2, 2016, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an adequacy evaluation of Mississippi's enforcement of its excavation damage prevention law, Title 77 Public Utilities and Carriers, Chapter 13, Regulation of Excavations near Underground Utility Facilities. This letter serves as your official notice of our findings and determination. Based on the evaluation, PHMSA has determined that the enforcement of Mississippi's excavation damage prevention law is **INADEQUATE** due to the State responding "no" to the following evaluation criteria:

- 1) Does the State have the authority to enforce its State excavation damage prevention law using civil penalties and other appropriate sanctions for violations?
- 2) Has the State designated a State agency or other body as the authority responsible for enforcement of the State excavation damage prevention law?
- 3) In the previous calendar year, did the State assessing civil penalties and/or other sanctions for violations?

PHMSA conducted the evaluation pursuant to 49 USC § 60114 and 49 CFR Part 198, Subpart D – State Damage Prevention Enforcement Programs. Our representatives met with Mr. Rickey Cotton with the Mississippi Public Service Commission, Mr. Sam Johnson with Mississippi 811, and a variety of Mississippi damage prevention stakeholders. PHMSA asked a series of standard questions regarding actions the State took in calendar year 2015 to enforce the State excavation damage prevention law.

In accordance with 49 CFR 198.55, States must be able to demonstrate that they adequately meet the seven federal criteria that PHMSA uses to assess the effectiveness of the State's damage prevention enforcement programs. These criteria evaluate if the State has the authority to enforce its excavation damage prevention law; that the State utilizes its authority to issue civil penalties and other appropriate sanctions for violations of the law; and, that the State is able to provide documented procedures, processes, and data that demonstrates an effective overall damage prevention enforcement program. The evaluation criteria are included in the attachment.

PHMSA representatives stressed during the evaluation, the importance of consistent, fair and balanced enforcement for violations of the one-call law, as well as data collection and analysis to evaluate the impact of the enforcement program. PHMSA encourages Mississippi stakeholders to address these issues in any future damage prevention enforcement efforts.

Effective 30 days from receipt of this letter, the determination will go into effect and PHMSA may enforce the Federal excavation standards defined in 49 CFR Part 196 against an excavator who damages a hazardous liquid or natural gas pipeline in Mississippi. It is important to note, this does not mean that Mississippi is unable to continue its enforcement efforts, only that PHMSA now has the authority to enforce its own Federal minimum excavation damage standards alongside your current efforts. PHMSA continues to recognize the importance of the role Mississippi officials play in the safety of their pipeline network, and will continue to work together with Mississippi officials going forward.

Federal civil penalty levels are up to \$205,638 for each violation for each day the violation continues with a maximum civil penalty of \$2,056,380 for any related series of violations. Additionally, States that fail to establish an adequate excavation damage prevention law enforcement program within five years from the date of the final PHMSA determination notice may be subject to a four percent reduction in PHMSA State Base Grant funding. This grant currently funds up to 80 percent of the cost of the pipeline safety program within the Mississippi Public Utilities Commission.

Mississippi has the right under 49 CFR Part 198.59 to submit to PHMSA within 30 days of receiving this letter, a written response contesting the inadequacy determination and request that the determination be withdrawn. Upon receipt of such notification, PHMSA will review all relevant information and will issue a final determination. Please send letters to my attention at the following address:

Mr. Alan K. Mayberry  
Acting Associate Administrator for Pipeline Safety  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Suite E22-207  
Washington, DC 20590

Additionally, the PHMSA evaluation of State damage prevention law enforcement will occur annually; however, if Mississippi takes action to establish an adequate enforcement program prior to the annual evaluation, Mississippi may request that PHMSA review and reconsider the State's designation of inadequate.

PHMSA strongly believes that effective damage prevention programs, including enforcement, are best addressed at the State level. Excavation damage continues to be a leading cause of hazardous liquid and natural gas pipeline incidents resulting in fatalities, serious injury, and environmental damage. Damaging a pipeline during excavation poses a serious safety risk to excavators, the public living and working in proximity to the excavation site, and the

environment. Nationwide statistics show that effective enforcement of State excavation damage prevention laws reduces excavation damage and pipeline incidents, and results in increased safety.

Mississippi has taken a significant step strengthening enforcement of the State excavation damage prevention law, with the Governor's signing of Senate Bill 2755 in May 2016. The next important step after the law takes effect January 1, 2017, is to utilize the enforcement authority and be prepared to demonstrate to PHMSA that the State is fully exercising its authority consistent with the terms of 49 CFR Part 198.55. We strongly urge Mississippi to review the PHMSA evaluation criteria and take them into consideration as the State rolls-out the enforcement program, and prepares for the next PHMSA evaluation in 2017. PHMSA willingly assisted Mississippi stakeholders in helping to educate lawmakers on the need for strong enforcement of the State excavation damage prevention law. We believe the new law will help protect the public, the environment, and our Nation's critical underground pipeline infrastructure. If we can be of any further support or assistance, please contact our Damage Prevention Team by email at [excavation.enforcement@dot.gov](mailto:excavation.enforcement@dot.gov) or by phone at (804) 556-4678.

Sincerely,



Alan K. Mayberry  
Acting Associate Administrator for Pipeline Safety

Enclosure

cc: The Honorable Phil Bryant, Office of the Governor, State of Mississippi  
Mr. Rickey Cotton, Director, Pipeline Safety Division, Mississippi Public Service  
Commission  
Mr. Sam Johnson, President, Mississippi 811