U.S. Department of Transportation

Pipeline and Hazardous Materials Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

December 5, 2012

RECEIVED
DEC 06 2012
PUBLIC SERVICE COMMISSION

OVERNIGHT EXPRESS MAIL

Mr. Aaron Morman, Program Manager
North Dakota Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0408

Dear Mr. Morman:

Sections 60105(e) and 60106(d) of the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 (Act) provide for the monitoring of State pipeline safety programs by the Pipeline and Hazardous Materials Safety Administration (PHMSA). This annual monitoring is to ensure compliance with the Act requirements for State pipeline safety programs and provides information for determining the State's total point award for the PHMSA pipeline safety grant for next year.

On August 28-30, 2012, the North Dakota Public Service Commission (NDPSC) CY 2011 Pipeline Safety Program activities, training, and other relative information were evaluated by Mr. Rex Evans, PHMSA Office of State Programs. As part of the evaluation, the annual Progress Report documents submitted to PHMSA were validated for accuracy. Additionally, our State Evaluator observed an on-site field inspection of Montana-Dakota Utilities. Thank you for the courtesies extended to Mr. Evans by your staff during the evaluation.

Based on our evaluation the NDPSC is generally complying with the requirements for State pipeline safety programs. Our exit briefing discussed the items for improving the pipeline safety program included in my letter to Chairman Kalk. You were copied on the Chairman's letter requesting a response to the issues within 60 days of receipt of the letter to avoid a point reduction in next years' evaluation. Additionally, please send me and Mr. Don Martin a PDF of the Chairman's signed response letter to zach.barrett@dot.gov and don.martin@dot.gov.

Other areas which require additional attention to strengthen your program include the following:

1. Take time to review any of the inspection forms that have been previously used to ensure they are updated and accurate based on current regulations. You were given all the current forms to compare to the ones currently being used.

2. Make sure the many training courses you need are attended as soon as practical. In the meantime, should you have any questions please feel free to contact your State Liaison Mr. Leonard Steiner. In addition, any of our other staff will also be willing to provide assistance.

767 PU-06-421 Filed: 12/6/2012 Pages: 5
Request for comments regarding PHMSA's evaluation

Department of Transportation

Zach Barrett, Director State Programs

3. Please continue to review Guidelines for State Participating in the Pipeline Safety Program.

The grant funding is based on accurate completion of the annual Progress Report and the State performance score from this evaluation. Attention to these two important items will help to assure your eligibility for maximum grant funding.

Thank you again for your courtesies and assistance in making available your time, staff, documents, and other relative information during this annual State program evaluation. I appreciate your continuing commitment to the pipeline safety program.

Sincerely,

Zach Barrett
Director State Programs
Office of Pipeline Safety

cc: Rex Evans, State Programs Evaluator, PHP-50, PHMSA
David Barrett, Director, Central Region, PHP-300, PHMSA

U.S. Department of Transportation

Pipeline and Hazardous Materials Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

RECEIVED
DEC 06 2012
PUBLIC SERVICE COMMISSION

December 5, 2012

OVERNIGHT EXPRESS MAIL

Mr. Brian Kalk, Chairman
North Dakota Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0408

Dear Chairman Kalk:

Sections 60105(e) and 60106(d) of the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 (Act) provide for the monitoring of State pipeline safety programs by the Pipeline and Hazardous Materials Safety Administration (PHMSA). This annual monitoring is to ensure compliance with the Act requirements for State pipeline safety programs and provides information for determining the State's total point award for the PHMSA pipeline safety grant for next year.

On August 28-30, 2012, a representative of PHMSA's Office of State Programs evaluated the CY 2011 Pipeline Safety program activities conducted by the North Dakota Public Service Commission (NDPSC). The evaluation encompassed the validation of annual Progress Report documents submitted to PHMSA, review of the pipeline program procedures and records, and the observation of an on-site inspection of a pipeline operator conducted by your staff. Thank you for the courtesies extended to Mr. Rex Evans, PHMSA State Programs, by your staff.

Based on the evaluation and the validation of Progress Report information, it appears the pipeline safety program is generally complying with PHMSA's requirements. As a result of this evaluation, I would like to bring the following items to your attention:

1. PHMSA appreciates the previous efforts of NDPSC in its pipeline safety efforts, but there has been a negative impact on the pipeline safety program due to the departure of Mr. Bob Bachmeier earlier in 2012. Although the evaluation conducted is primarily on CY2011 activities, and you have recently hired a replacement for Mr. Bachmeier, there will be almost an entire year before qualified inspections are being conducted on the natural gas operators in North Dakota. PHMSA has increased grant funding to support the hiring of additional pipeline safety staff. We strongly recommend the NDPSC either hire or assign additional inspection staff to ensure pipeline inspections are being conducted to assure public safety.

2. In our letter to the NDPSC dated 11-00-2011 we indicated the need for an analysis of damage prevention data within North Dakota. This item has not been addressed and has resulted in a deduction of two grant allocation points and associated grant funding for this issue.

3. The inspection forms used by the pipeline safety staff have not been updated to reflect items such as Excess Flow Valve (EFV) installations. All inspection forms should be reviewed and updated to reflect any of the more recent regulatory requirements needed. This resulted in a deduction of one grant allocation point and associated grant funding for this issue.

4. The input of applicable Operator Qualification and Integrity Management inspections into PHMSA's database is required as part of the program activity. This had not been completed as required and resulted in a deduction of one grant allocation point and associated grant funding for this issue.

5. It did not appear that any review had been completed on natural gas operators Integrity Management (IMP) plans during CY2011. It's imperative that operator IMP programs are periodically reviewed including the monitoring of operator tests and remedial actions. This resulted in a deduction of one grant allocation point and associated grant funding for this issue.

6. The NDPSC should be verifying that Public Awareness plans are being evaluated for effectiveness by the operator. There was no record of these activities being conducted and resulted in a deduction of one grant allocation point and associated grant funding for this issue.

7. PHMSA Guidelines to States Participating in the Pipeline Safety Program require that any compliance notification be sent to a company officer. During review of compliance actions it appears the NDPSC had been addressing compliance actions to lower level company employees. This has resulted in a deduction of one grant allocation point and associated grant funding for this issue.

8. The NDPSC will need to adopt civil penalties and injunctive relief for pipeline violations that are the same as are provided under the Federal pipeline safety laws to prevent a future loss of grant allocation points and related funding. The present Federal penalty limits are $200,000 for each violation up to a maximum of $2,000,000 for a related series of violations. It has been previously indicated that this issue will be resolved in the North Dakota biennial session that will convene in CY2013. We look forward to your successful efforts with this issue.

9. We appreciate the NDPSC's efforts in the enforcement of damage prevention activities in the state and the active investigation and enforcement of violations to the North Dakota state law.

10. We are glad you had the opportunity to hire a new inspector, Mr. Aaron Morman, at the beginning of August. We look forward to providing Mr. Morman the necessary training and education in pipeline safety inspection and compliance and also appreciate the immediate attention he is giving to the new position.

Please provide your comments regarding the above items 1-8 within 60 days of your receipt of this letter to avoid losing performance points in next year's evaluation. The response should be addressed to me at the following address: 6500 South MacArthur, Building MPB Room 335, Route PHP-70, Oklahoma City, OK 73169.

Thank you for your contributions and continuing support of the pipeline safety program.

Sincerely,

Zach Barrett
Director State Programs
Office of Pipeline Safety

cc: Aaron Morman, Program Manager, North Dakota Public Service Commission
David Barrett, Director, Central Region, PHP-300, PHMSA
Rex Evans, State Programs Evaluator, PHP-50, PHMSA