



U.S. Department
Of Transportation

1200 New Jersey Ave., SE
Washington, DC 20590

Pipeline and Hazardous Materials
Safety Administration

November 19, 2013

OVERNIGHT EXPRESS MAIL

Chairman Brian Kalk
North Dakota Public Service Commission
600 East Boulevard Avenue
Department 408, 12th Floor
Bismarck, North Dakota 58505-0408

Dear Chairman Kalk:

Sections 60105(e) and 60106(d) of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Act) provides for the monitoring of State pipeline safety programs by the Pipeline and Hazardous Materials Safety Administration (PHMSA). This annual monitoring ensures State Pipeline Safety Programs are compliant with the Act's requirements and with the annual Progress Report score determines a State's total point award for next year's PHMSA pipeline safety grant.

On April 15-19, 2013 and August 27, 2013, a representative of PHMSA's Office of State Programs evaluated the CY 2012 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. Leonard Steiner, 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. A review of the NDPSC's 2012 Natural Gas Base Grant Progress Report resulted in a score of 44 out of a possible 50 points. Two grant allocation points were deducted because your authorized civil penalty amounts are not substantially the same as the Federal levels. The NDPSC's maximum civil penalty amounts are \$10,000 per day up to \$500,000 for a series of violations. Failure to enact civil penalties of \$100,000 per day to \$1,000,000 for a series of violations resulted in the loss of two grant allocation points and

the loss of the associated funding. PHMSA again encourages you to support legislation to provide you with the needed levels of civil penalties for full compliance of PHMSA's pipeline safety program.

- a. Four points were deducted because the number of inspection days conducted was less than the required minimum. The NDPSC for CY 2012 conducted 72.2 days of inspection of the 98 required inspection days. For CY 2013 the minimum number of inspection days is 101 and for CY 2014 the minimum number of inspection days is 108. The minimum inspection days are determined from the inventory of number of operators, units, miles of pipe, and number of service lines and communicated to State Program Managers prior to the year they are required to be accomplished. Please take action to meet the minimum required number of inspection days for your pipeline safety program.
2. During the evaluation five points were deducted for lack of performance. One grant allocation point and associated grant funding was deducted for each below item where improvement is necessary to prevent a continued loss of grant funding:
- a. It is important for inspection forms to cover all applicable pipeline regulations so they are addressed during inspections. The NDPSC needs to review all inspection forms and update them to include all applicable regulation requirements.
 - b. The results of the Operator Qualification (OQ) inspections must be uploaded into the PHMSA OQ database.
 - c. The NDPSC must conduct Integrity Management Program (IMP) inspections for all operators of transmission pipelines and the results must be uploaded into the PHMSA IMP database.
 - d. The NDPSC did not conduct Public Awareness Programs (PAP) inspections for CY 2012 or CY 2011. Public Awareness Program inspections have been required since December 31, 2007. PHMSA requires all PAP inspections of operators to be completed by CY 2013.
 - e. NDPSC does not have a complete and adequate procedure to identify the steps to be taken from discovery to resolution of an identified probable violation. This procedure should specify the actions taken within the pipeline safety division and then reference the actions taken at the Commission level. This procedure should include all actions from the notice to the operator of the probable violation, the operator official to receive the notification, through the process of how and who determines if the probable violation has been corrected.
3. Several programs that will have an impact on the NDPSC pipeline safety program are the requirements to inspect Distribution Integrity Management Program (DIMP), Public Awareness Programs, and Control Room Management requirements. Additional time will be needed for the inspections, the prioritization and the documentation and analysis

of inspection results. The first round of DIMP inspections must be completed by the end of CY 2014.

4. I would like to acknowledge and commend the NDPSC for increasing the authorized number of pipeline safety inspectors by one Full Time Employee. This year we were notified that Mr. Clint Thomas has joined the NDPSC team. This addition is vital to the performance of the NDPSC Pipeline Program. Since this program is small with only two personnel, the full performance effectiveness will take several years. There are seven courses Mr. Thomas needs to complete within three years and the Transmission Integrity Management Programs inspections require additional designated courses to be completed. Please support the required training for Mr. Thomas.
5. I would like to express my appreciation for the time given to Mr. Steiner to meet with the Commission. This meeting should have provided immediate communications of the status of the North Dakota Pipeline Safety Program, emphasizing the recommendations for improvement, and answering your questions.

Please provide your comments regarding the above items 1 and 2 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: 3700 S. MacArthur Blvd, Suite B, Oklahoma City, OK 73179-7612. Thank you for your contributions and continuing support of the pipeline safety program.

Sincerely,



Zach Barrett
Director for State Programs
Office of Pipeline Safety

cc: Aaron Morman, North Dakota State Program Manager
Linda Daugherty, PHMSA Central Region Director