

**NOTICE OF PROBABLE VIOLATION
and
PROPOSED CIVIL PENALTY**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 11, 2013

Mr. Connell R. Rader
President
Enmark Energy, Inc.
104 First Choice Drive, Suite A
Madison, MS 39110

CPF 2-2013-6002

Dear Mr. Rader:

From October 16-17, 2012, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS) inspected the Enmark Energy, Inc. (Enmark) written Public Awareness and Damage Prevention Program (PADPP) at your Madison, Mississippi, office pursuant to Chapter 601 of 49 United States Code. Enmark operates carbon dioxide (CO₂) and natural gas pipelines in the states of Arkansas, Louisiana, Mississippi, Texas, and West Virginia. The pipelines subject to this inspection were the Sandhill CO₂ pipeline and the Air Liquide CO₂ pipeline in Mississippi.

As a result of the inspection, it appears that Enmark has committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violations are as follows:

1. §195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, *see* §195.3).

Enmark developed a written continuing public education program; i.e., the Enmark Energy, Inc. Public Awareness and Damage Prevention Program (PADPP), but it did not implement the PADPP in accordance with its written procedures.

Specifically in Section 8.2.3 of Enmark's PADPP stated,

"An annual review of the programs is conducted by:

- Internal Self-Assessments; or*
- Third-party audits; or*
- Regulatory Inspections (not preferred)"*

Despite the above, Enmark did not provide records or other documentation to demonstrate that it had completed an annual review using any of the above listed methods. Moreover, when queried by the PHMSA inspector about the required annual reviews, Enmark personnel confirmed the annual reviews had not been completed.

2. §195.440 Public awareness.

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (incorporated by reference, see §195.3).

Enmark developed a written continuing public education program; i.e., the Enmark PADPP, but it did not implement the PADPP in accordance with its written procedures.

Section 8.3 of Enmark's PADPP, *"Measuring Program Effectiveness"* contained procedures for performing a program effectiveness evaluation. In addition, a table titled *"Summary of Evaluation Program"* required Enmark to perform these evaluations at intervals of *"no more than four years apart"* and that Enmark *"should consider it [i.e. performing a program effectiveness evaluation] more frequently as a supplement or upon a major redesign of the program."*

When queried by the PHMSA inspector about program effectiveness evaluations, Enmark personnel confirmed that Enmark had not conducted a program effectiveness evaluation. Enmark personnel added that Paradigm, Enmark's external support vendor, had done some effectiveness evaluation work and provided the PHMSA inspector with several Paradigm documents.

The PHMSA inspector and the Southern Region supervisors reviewed the Paradigm documents and found they did not meet the regulatory requirements for a public awareness program effectiveness evaluation. Three documents contained the results of focus group studies for the years 2008, 2010 and 2012. While these focus group studies met the regulatory requirement for pre-testing message materials, the studies did not constitute an effectiveness evaluation of Enmark's program in accordance with the requirements specified in *API RP 1162, Section 8.4 Measuring Program Effectiveness* (incorporated by reference, see §195.3).

Enmark personnel provided three additional Paradigm documents titled *"Enmark Energy, Inc. Effectiveness Measurement"* dated July 2010, 2011, and 2012. These documents contained information on the focus group studies and the results of surveys completed by Paradigm online, by telephone, and by using business reply cards. While the results of these surveys contained data compiled in pie charts and bar charts, Enmark did not

provide any analysis of the data and did not provide any conclusions or recommendations. Some of the survey questions pertained to petroleum or natural gas pipelines; products not shipped in the pipelines subject to this inspection. However, none of the questions in any of the surveys pertained specifically to carbon dioxide pipelines. For example, in the July 2010 effectiveness measurement document, Question 2 for the *Affected Public* asked “*Do you live close to a petroleum or natural gas pipeline?*” And, Question 1 for *Emergency Officials* asked “*Are you aware that an oil or natural gas pipeline is located in your community?*” While PHMSA recognizes that Enmark’s PADPP covers pipelines other than the carbon dioxide pipelines subject to this inspection, the questions about petroleum and natural gas pipelines did not relate to, or provide any data about, the recipients’ understanding of the carbon dioxide pipelines that Enmark operates in Mississippi. Survey data alone does not constitute a program effectiveness evaluation as required by API RP 1162, Section 8.4.

3. §195.440 Public awareness.

... (b) The operator's program must follow the general program recommendations of American Petroleum Institute's (API) Recommended Practice (RP) 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

Enmark did not assess the unique attributes and characteristics of its pipeline systems in developing and implementing its written PADPP.

While the Enmark pipelines subject to the PHMSA inspection transport carbon dioxide, the PADPP baseline message brochures used by Enmark for all stakeholder audiences from 2007 through 2011 did not provide any information on the attributes and characteristics of carbon dioxide. In fact, in some cases the brochures mislead the audience by specifically addressing pipelines transporting natural gas and petroleum products but not carbon dioxide. For example, the brochure mailed to the affected public stakeholder audience in 2010 stated under the heading “*What to do in the event a leak were to occur,*” “*The following guidelines are designed to ensure your safety and the safety of those in the area if a petroleum product or natural gas pipeline leak is suspected or detected.*” The transported product, carbon dioxide, has significantly different attributes and characteristics than petroleum products or natural gas; but, the brochure failed to address how the intended audience would recognize and react to a release of carbon dioxide from the pipeline.

4. §195.440 Public awareness.

... (e) The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.

The PADPP baseline message brochures distributed to all stakeholders from 2007 to 2011 did not adequately address the location of Enmark’s pipelines. The brochures referred the stakeholders to the National Pipeline Mapping System for information on pipelines in their area. Enmark should have identified itself and its contact information for stakeholders to call for information on Enmark pipelines.

In 2012 Enmark added an operator profile sheet to the distribution of the baseline message brochure to provide additional information specific to Enmark’s pipeline system. The operator profile sheet incorrectly instructed recipients to learn more about pipelines near them by calling “...*your state Public Service Commission, your state One Call (811), or the local pipeline company in your area.*” The federal pipeline safety regulations do not allow operators to shift the burden of public awareness to the various state public service commissions or to the state one-call centers. Moreover, Enmark should have identified itself, not the “*local pipeline company,*” as the entity to call for information on Enmark pipelines.

Proposed Civil Penalty

Under 49 United States Code, § 60122, you are subject to a civil penalty not to exceed \$200,000 per violation per day the violation persists up to a maximum of \$2,000,000 for a related series of violations. For violations occurring prior to January 4, 2012, the maximum penalty may not exceed \$100,000 per violation per day, with a maximum penalty not to exceed \$1,000,000 for a related series of violations. The Compliance Officer has reviewed the circumstances and supporting documentation involved in the above probable violations and has recommended that you be preliminarily assessed a civil penalty of \$20,000 as follows:

<u>Item number</u>	<u>PENALTY</u>
2	\$10,000
3	\$10,000

Warning Items

With respect to items 1 and 4, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement actions or penalty assessment proceedings at this time. We advise you to promptly correct these items. Failure to do so may result in additional enforcement action.

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Pipeline Operators in Compliance Proceedings*. Please refer to this document and note the response options. All material you submit in response to this enforcement action may be made publicly available. If you believe that any portion of your responsive material qualifies for confidential treatment under 5 U.S.C. 552(b), along with the complete original document you must provide a second copy of the document with the portions you believe qualify for confidential treatment redacted and an explanation of why you believe the redacted information qualifies for confidential treatment under 5 U.S.C. 552(b). If you do not respond within 30 days of receipt of this Notice, this constitutes a waiver of your right to contest the allegations in this Notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in this Notice without further notice to you and to issue a Final Order.

In your correspondence on this matter, please refer to **CPF 2-2013-6002** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Wayne T. Lemoi
Director, Office of Pipeline Safety
PHMSA Southern Region

Enclosures:

Response Options for Pipeline Operators in Compliance Proceedings