

**April 29, 2016**

Mr. Rodney Sailor  
President & CEO  
Enable Mississippi River Transmission, LLC  
1111 Louisiana Street  
Houston, TX 77002

**Re: CPF No. 4-2015-1003**

Dear Mr. Sailor:

Enclosed please find the Final Order issued in the above-referenced case. It makes one finding of violation, assesses a civil penalty of \$138,200, and specifies actions that need to be taken by Enable Mississippi River Transmission, LLC, to comply with the pipeline safety regulations. The penalty payment terms are set forth in the Final Order. When the civil penalty has been paid and the terms of the compliance order completed, as determined by the Director, Southwest Region, this enforcement action will be closed. Service of the Final Order by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

Enclosure

cc: Mr. Rodrick M. Seeley, Director, Southwest Region, OPS  
Mr. Walter Ferguson, Senior Vice President, Enable Mississippi River Transmission,  
LLC  
Mr. Chris Bullock, Director DOT Compliance, Enable Midstream Partners, LP

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

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**In the Matter of** )

) )  
**Enable Mississippi River Transmission, LLC,** )  
**a subsidiary of Enable Midstream Partners, LP,**)

**CPF No. 4-2015-1003**

) )  
**Respondent.** )  
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**FINAL ORDER**

Pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), conducted an investigation of an incident involving the gas pipeline system operated by Enable Mississippi River Transmission, LLC (Enable or Respondent), near Newport, Arkansas. Enable is a subsidiary of Enable Midstream Partners, LP, a natural gas operator whose facilities include approximately 12,300 miles of gathering lines, 7,900 miles of interstate pipeline, and 2,200 miles of intrastate pipelines.<sup>1</sup>

The investigation arose out of an excavation-related accident involving Enable's 26" Mainline 3 (ML 3) line near Newport, Arkansas. On October 22, 2014, Enable's unmarked ML 3 pipeline was struck by Tanner Construction Company, Inc. (Tanner), resulting in the release of 11 MMCF of natural gas.

As a result of the investigation, the Director, Southwest Region, OPS (Director), issued to Respondent, by letter dated March 12, 2015, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice), which also included warnings pursuant to 49 C.F.R. § 190.205. In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Enable had violated 49 C.F.R. § 192.614 and proposed assessing a civil penalty of \$138,200 for the alleged violation. The Notice also proposed ordering Respondent to take certain measures to correct the alleged violation. The warning items required no further action but warned the operator to correct the probable violations or face future potential enforcement action.

Enable responded to the Notice by letter dated April 16, 2015 (Response). The company did not contest the allegation of violation but provided an explanation of its actions and requested that

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<sup>1</sup> Enable Midstream Partners, LP, website, available at <http://www.enablemidstream.com/html/pages/p002-about.html> (last accessed December 16, 2015).

the proposed civil penalty be reduced. Respondent did not request a hearing and, therefore, has waived its right to one.

### **FINDING OF VIOLATION**

In its Response, Enable did not contest the allegation in the Notice that it violated 49 C.F.R. Part 192, as follows:

**Item 1:** The Notice alleged that Respondent violated 49 C.F.R. § 192.614(c)(5), which states:

**§ 192.614 Damage prevention program.**

(a) Except as provided in paragraphs (d) and (e) of this section, each operator of a buried pipeline must carry out in accordance with this section, a written program to prevent damage to that pipeline from excavation. For the purposes of this section, excavation activities includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations. . .

(c) The damage prevention program required by paragraph (a) of this section must, at a minimum:

(1) . . .

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.

The Notice alleged that Respondent violated 49 C.F.R. § 192.614(c)(5) by failing to carry out a damage prevention program that provided temporary marking of its buried pipeline in the area of certain excavation activity near Newport, Arkansas, before, as far as practical, the activity began. Specifically, the Notice alleged that on October 16, 2014, Enable received a one-call notification from Tanner regarding the construction company's plans to excavate in the area of Enable's ML 3 pipeline beginning on October 20, 2014. Enable's third-party locator, ARKUPS, did not attempt to locate the ML 3 line until October 21, 2014, at which time its personnel were unable to mark the location and, therefore, returned the ticket to the processing system for further action by Enable. Based on the information in the one-call notification record, the first attempt to mark the pipeline by Enable personnel allegedly occurred on October 22, 2014, after the planned excavation activity by Tanner had already commenced.

Respondent did not contest this allegation of violation, but asked for a reduction in the proposed civil penalty. As such, I will address those assertions below. Accordingly, based upon a review of all of the evidence, I find that Respondent violated 49 C.F.R. § 192.614(c)(5) by failing to provide temporary marking of its buried pipeline in the area of certain excavation activity near Newport, Arkansas, before, as far as practical, the activity began.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

### ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$200,000 per violation for each day of the violation, up to a maximum of \$2,000,000 for any related series of violations. In determining the amount of a civil penalty under 49 U.S.C. § 60122 and 49 C.F.R. § 190.225, I must consider the following criteria: the nature, circumstances, and gravity of the violation, including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require. The Notice proposed a total civil penalty of \$138,200 for the violations cited above.

**Item 1:** The Notice proposed a civil penalty of \$138,200 for Respondent's violation of 49 C.F.R. § 192.614(c)(5), for failing to carry out a damage prevention program that provided temporary marking of its buried pipeline in the area of excavation activity before, as near as practical, the activity began. As noted above, Enable did not contest the finding of violation but requested that PHMSA mitigate or reduce the proposed penalty based on certain extenuating circumstances. Enable argues that the circumstances relating to the sequence of communications between ARKUPS and Tanner, and Tanner's decision to continue excavation should reduce the proposed civil penalty.

First, Enable asserted that PHMSA's allegation that Respondent's third-party contractor did not attempt to locate the line until October 21, 2014, is incorrect. Enable stated that even though it is not documented in the one-call ticket, the independent root cause investigation conducted by Enable found that ARKUPS first contacted Tanner on October 20, 2014. The one-call ticket showed the origination time as 12:13 p.m. on October 16, 2014, and the excavation work was scheduled to commence at 12:15 p.m. on October 20, 2014.<sup>2</sup> Respondent claimed that between 3:00 p.m. and 4:00 p.m. on October 20, 2014, Tanner was informed that ARKUPS personnel, Mr. Justin Simpson, would not be on location until October 21, 2014, due to a backlog of work. Next, when Mr. Simpson arrived at approximately 4:31 p.m. on October 21, 2014, he was unable to locate the pipeline and informed Tanner that Enable would be at the dig site the following day to provide more information as to where the ML 3 pipeline was located. Respondent argued that Tanner made the deliberate decision to continue excavation activities knowing the ML 3 pipeline was in the general area but had not been actually located.

Enable may be correct that ARKUS made its first contact with Tanner on October 20, 2014, at which time ARKUS indicated that it would not be able to attempt to locate the line until the following day, October 21. However, the Arkansas damage prevention law requires a two working day time-frame for line locating,<sup>3</sup> or until October 18. While Tanner should possibly

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<sup>2</sup> The incident report, dated November 10, 2014 (revised February 10, 2015), shows that Tanner's excavation work actually commenced at 1:00 p.m. on October 20, 2014. (on file with PHMSA).

<sup>3</sup> Arkansas State Code, Chapter 271, Section 14-271-110. Pipeline Safety Violation Report (Violation Report), (March 12, 2015) (on file with PHMSA), at 5.

not have proceeded with excavation before the ticket was properly cleared by Enable, a pipeline operator nevertheless has a clear duty to mark its facilities, “as far as practical,” before excavation begins.

I can find nothing in the record to explain why Enable could not have ensured that its contractor temporarily mark Enable’s ML 3 line within the two-day window required under Arkansas law or why it was not “practical” to mark the line before excavation was due to begin on October 20.

Respondent’s breach of § 192.614(c)(5) is a serious violation that was the causal factor in the excavation accident on October 22, 2014. That accident led to adverse consequences to the people and environment surrounding this facility, causing the release of 11 MMCF of natural gas. Accordingly, based on the gravity of the violation and Respondent’s culpability, I assess Respondent a civil penalty of \$138,200 for violation of 49 C.F.R. § 192.614(c)(5).

In summary, having reviewed the record and considered the assessment criteria for the Item cited above, I assess Respondent a civil penalty of **\$138,200**.

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require such payment to be made by wire transfer through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMK-325), Federal Aviation Administration, 6500 S MacArthur Blvd., Oklahoma City, Oklahoma 79169. The Financial Operations Division telephone number is (405) 954-8845.

Failure to pay the \$138,200 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a district court of the United States.

### **COMPLIANCE ORDER**

The Notice proposed a compliance order with respect to Item 1 in the Notice for violation of 49 C.F.R. § 192.614(c). Under 49 U.S.C. § 60118(a), each person who engages in the transportation of gas or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. Pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is ordered to take the following actions to ensure compliance with the pipeline safety regulations applicable to its operations:

1. With respect to the violation of § 192.614(c)(5) (**Item 1**), Respondent must:
  - A. Revise the company’s *Damage Prevention Procedure 5.3.2 – Locate Requests*, to provide for the tracking of locate requests to ensure they are

marked in accordance with Respondent's procedures within the prescribed timeframes; and

- B. Submit Item A no later than 30 days from the issuance of the Final Order in this case.

The Director may grant an extension of time to comply with any of the required items upon a written request timely submitted by the Respondent and demonstrating good cause for an extension.

In addition, pursuant to the authority of 49 U.S.C. § 60118(b) and 49 C.F.R. § 190.217, Respondent is requested (not mandated) to take the following action:

Enable should maintain documentation of the safety improvement costs associated with fulfilling this Compliance Order and submit the total to R. M. Seeley, Director, Southwest Region, Pipeline and Hazardous Materials Safety Administration. It is requested that these costs be reported in two categories: 1) total cost associated with preparation/revision of plans, procedures, studies and analyses; and 2) total cost associated with replacements, additions and other changes to pipeline infrastructure.

Failure to comply with this Order may result in the administrative assessment of civil penalties not to exceed \$200,000 for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

### **WARNING ITEMS**

The Notice alleged two other probable violations of Part 192, but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 192.614(c)(4) (**Item 2**) — Respondent's alleged failure to provide actual notification to persons giving notice of their intention to excavate, in accordance with its written damage prevention program; and

49 C.F.R. § 192.614(c)(6) (**Item 3**) — Respondent's alleged failure to provide for inspection of its ML 3 pipeline to prevent third-party damage, and failing to ensure the integrity of the pipeline.

Enable presented information in its Response showing that it had taken certain actions to address the cited items. If OPS finds a violation of any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

Under 49 C.F.R. § 190.243, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be sent to: Associate Administrator, Office of Pipeline Safety, PHMSA, 1200 New Jersey Avenue, SE, East Building, 2<sup>nd</sup> Floor, Washington, DC 20590, with a copy sent to the Office of Chief Counsel, PHMSA, at the same address. PHMSA will accept petitions received no later than 20 days after receipt of service of this Final Order by

the Respondent, provided they contain a brief statement of the issue(s) and meet all other requirements of 49 C.F.R. § 190.243. The filing of a petition automatically stays the payment of any civil penalty assessed. Unless the Associate Administrator, upon request, grants a stay, all other terms and conditions of this Final Order are effective upon service in accordance with 49 C.F.R. § 190.5.

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Jeffrey D. Wiese  
Associate Administrator  
for Pipeline Safety

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Date Issued

## **Payment Instructions**

### ***Civil Penalty Payments of Less Than \$10,000***

Payment of a civil penalty of less than \$10,000 proposed or assessed, under Subpart B of Part 190 of the Pipeline Safety Regulations can be made by certified check, money order or wire transfer. Payment by certified check or money order (containing the CPF Number for this case) should be made payable to the "Department of Transportation" and should be sent to:

Federal Aviation Administration  
Financial Operations Division (AMK-325)  
ATTN: Shelby Jones  
6500 S MacArthur Blvd.,  
Oklahoma City, OK 79169

Wire transfer payments of less than \$10,000 may be made through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfer should be directed to the Financial Operations Division at (405) 954-8845, or at the above address.

### ***Civil Penalty Payments of \$10,000 or more***

Payment of a civil penalty of \$10,000 or more proposed or assessed under Subpart B of Part 190 of the Pipeline Safety Regulations must be made wire transfer (49 C.F.R. § 89.21 (b)(3)), through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury. Detailed instructions are provided below. Questions concerning wire transfers should be directed to the Financial Operations Division at (405) 954-8845, or at the above address.

## INSTRUCTIONS FOR ELECTRONIC FUND TRANSFERS

(1) <u>RECEIVER ABA NO.</u> 021030004	(2) <u>TYPE/SUB-TYPE</u> (Provided by sending bank)
(3) <u>SENDING BANK ABA NO.</u> (Provided by sending bank)	(4) <u>SENDING BANK REF NO.</u> (Provided by sending bank)
(5) <u>AMOUNT</u>	(6) <u>SENDING BANK NAME</u> (Provided by sending bank)
(7) <u>RECEIVER NAME</u> TREAS NYC	(8) <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)
(9) <u>BENEFICIAL (BNF) = AGENCY LOCATION CODE</u> BNF = /ALC-69-14-0001	(10) <u>REASONS FOR PAYMENT</u> Example: PHMSA - CPF # / Ticket Number/Pipeline Assessment number

**INSTRUCTIONS:** You, as sender of the wire transfer, must provide the sending bank with the information for blocks (1), (5), (7), (9), and (10). The information provided in Blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

**Block #1** - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this 9-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

**Block #5** - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. **EXAMPLE: \$10,000.00**

**Block #7** - RECEIVER NAME - "TREAS NYC". Ensure the sending bank enters this abbreviation. It must be used for all wire transfers to the Treasury Department.

**Block #9** - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/ALC-69-14-0001". Ensure the sending bank enters this information. This is the Agency Location Code for the Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

**Block #10** - REASON FOR PAYMENT - "AC-payment for PHMSA Case # / To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

**NOTE:** A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You as the sender can assist this process by notifying the Financial Operations Division (405) 954-8845 at the time you send the wire transfer.