



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

8701 South Gessner, Suite 1110
Houston, TX 77074

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

March 12, 2015

Walter Ferguson
Senior Vice President
Enable Mississippi River Transmission, LLC
1111 Louisiana Street
Houston TX 77002

CPF 4-2015-1003

Dear Mr. Ferguson:

On October 22, 2014, Enable Mississippi River Transmission, LLC experienced an excavation related accident to its Mainline 3 (ML 3) 26" line near Newport AR. Following the incident, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code conducted an incident investigation and reviewed documentation related to the accident in Newport, Arkansas.

As a result of the investigation, it appears that you have committed probable violations of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violation(s) are:

1. §192.614 Damage prevention program.

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

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

Enable Mississippi River Transmission (Enable) failed to provide temporary marking of its buried pipeline in the area of excavation activity near Newport, Arkansas. On October 22, 2014, Enable's unmarked Mainline 3, 26" pipeline was struck by Tanner Construction resulting in the release of 11 MMCF of natural gas.

On October 16, 2014, Enable received a one-call notification from Tanner Construction regarding their plans to excavate in the area of their ML 3 pipeline. The one-call notification indicated the commencement date for the planned excavation to be October 20, 2014. Enable's third party locate contractor did not attempt to locate the line until October 21, 2014, at which time they were unable to mark the location and returned the ticket for further action by Enable. A review of the one-call notification record revealed that the first attempt to mark this pipeline by Enable personnel was on October 22, 2014 after the planned excavation activity had commenced.

2. §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 activities. 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:

(4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings.

Enable Mississippi River Transmission failed to provide a positive response (notification) in accordance with its written Damage Prevention Program (Section 5.4.2). Enable's failure to follow its procedures to provide a positive response allowed the excavator to proceed with the planned excavation activity with no indication as to whether the line was marked or if the area was considered "all clear." On October 22, 2014, Enable's

unmarked Mainline 3, 26" pipeline was struck by Tanner Construction resulting in the release of 11 MMCF of natural gas.

Enable's Damage Prevention Program, section 5.4.2, requires that a positive response be made to the excavator allowing the excavator to know whether the company has marked the requested area or if the area is "all clear," prior to beginning excavation. The one-call notification record does not show any response made to the excavator prior to the commencement date of the planned excavation activity.

3. §192.614 Damage prevention program.

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

(6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

(i) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline;

Enable Mississippi River Transmission Company did not provide for inspection of their Mainline 3, 26" pipeline to prevent damage from third party damage, nor did they ensure the integrity of the pipeline. Enable received a one-call notification on October 16, 2014, regarding planned excavation by Tanner Construction on October 20, 2014. Enable's third party locate contractor attempted to locate the line on October 21, 2014, however, they were unsuccessful and returned the one-call notification to Enable for further response and locate. Enable personnel did not arrive onsite prior to the excavation damage on October 22, 2014.

Enable's Damage Prevention Program, section 5.4.3, requires periodic monitoring and inspections for excavations within 25 feet of the pipeline and authorized company personnel to shut down excavation activity that is deemed unsafe. This section also requires continuous oversight by company personnel for excavation within 5 feet of pipeline. Enable failed to follow their written procedures to provide monitoring or oversight of the planned excavation activities.

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 violation(s) and has recommended that you be preliminarily assessed a civil penalty of \$138,200 for item 1.

Warning Items

With respect to items 2 and 3, we have reviewed the circumstances and supporting documents involved in this case and have decided not to conduct additional enforcement action or penalty assessment proceedings at this time. We advise you to promptly correct these item(s). Failure to do so may result in additional enforcement action.

Proposed Compliance Order

With respect to item 1 pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration proposes to issue a Compliance Order to Enable Mississippi River Transmission. Please refer to the *Proposed Compliance Order*, which is enclosed and made a part of this Notice.

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 4-2015-1003** and for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,



R. M. Seeley
Director, Southwest Region
Pipeline and Hazardous Materials Safety Administration

Enclosures: *Proposed Compliance Order*
Response Options for Pipeline Operators in Compliance Proceedings

PROPOSED COMPLIANCE ORDER

Pursuant to 49 United States Code § 60118, the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to issue to Enable Mississippi River Transmission a Compliance Order incorporating the following remedial requirements to ensure the compliance of Enable Mississippi River Transmission with the pipeline safety regulations:

1. In regard to Item Number 1 of the Notice pertaining to Damage Prevention Procedure 5.3.2 – Locate Requests, Enable Mississippi River Transmission shall revise this procedure to provide for the tracking of locate requests to ensure they are marked in accordance with Enable procedures within the prescribed timeframes.
2. Item 1 shall be submitted to PHMSA no later than 30 days from the issuance of the Final Order in this case.
3. It is requested (not mandated) that Enable Mississippi River Transmission 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.