

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

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

September 18, 2019

Mr. and Mrs. Tulafono and Evelyn Young
Owners
Bohrenworks LLC
1435 W. Vermijo Ave.
Colorado Springs, CO 80904

CPF 5-2019-0018E

Dear Mr. and Mrs. Young:

On November 16, 2018 through April 9, 2019, 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 (U.S.C.), investigated circumstances surrounding the November 16, 2018 damage to a natural gas pipeline located near 13962 East Linvale Place, Aurora, Colorado.

Background

On November 16, 2018 Xcel Energy notified the National Response Center (NRC) of a third-party strike on its natural gas pipeline in Aurora, Colorado. At approximately 4:30pm MST, Bohrenworks LLC (Bohrenworks) hit Xcel Energy's unmarked 1 ¼ inch pipeline with a directional boring machine while it was engaged in excavation activities for the installation of telecom/fiber cable. The strike resulted in an explosion, when natural gas migrated into a dwelling which subsequently exploded. Two individuals were injured and one deceased individual was discovered the next day. Approximately 30 people were evacuated, and gas service was shut off to 10 homes (approximate) due to this incident.

Based on excavation activities investigated, it is alleged that you have committed probable violations in Part 196 of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (C.F.R.). The items investigated and the probable violations are:

1. § 196.103 What must an excavator do to protect underground pipelines from excavation-related damage?

Prior to and during excavation activity, the excavator must:

(a) Use an available one-call system before excavating to notify operators of underground pipeline facilities of the timing and location of the intended excavation;

Bohrenworks violated 49 C.F.R. § 196.103(a) because, prior to its excavation activity, it did not use the available one-call system, Colorado 811 (CO 811 One-Call Center) to notify operators of underground pipeline facilities of the timing and location of its intended excavation/horizontally boring activity. As a result, Xcel Energy was not aware of the planned excavation activities and did not mark its line. Consequently, Bohrenworks was unaware of the underground pipeline facility near the excavation site, and hit the 1 ¼ inch pipeline, causing an explosion resulting in injuries and one fatality. After the incident, the Colorado Public Utilities Commission (COPUC) reviewed one-call tickets opened in the month prior to the incident near the incident location, and confirmed that no one-call tickets were opened by Bohrenworks.

Proposed Civil Penalty

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$213,268 per violation per day the violation persists, up to a maximum of \$2,132,679 for a related series of violations. For violations occurring on or after November 2, 2015 and before November 27, 2018, the maximum penalty may not exceed \$209,002 per violation per day, with a maximum penalty not to exceed \$2,090,022. For violations occurring prior to November 2, 2015, the maximum penalty may not exceed \$200,000 per violation per day, with a maximum penalty not to exceed \$2,000,000 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 \$209, 002 as follows:

<u>Item number</u>	<u>Proposed Penalty</u>
1	\$209, 002

Response to this Notice

Enclosed as part of this Notice is a document entitled *Response Options for Excavators in Enforcement Proceedings*. Please refer to this document and note the response options. All material 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).

Following the receipt of this Notice, you have 30 days to submit written comments, or request a hearing under 49 C.F.R. § 190.211. 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. If you are responding to this Notice, we propose that you submit your correspondence to my office within 30 days from the receipt of this Notice. This period may be extended by written request for good cause.

In your correspondence on this matter, please refer to **CPF 5-2019-0018E** and, for each document you submit, please provide a copy in electronic format whenever possible.

Sincerely,

Dustin Hubbard
Director, Western Region
Pipeline and Hazardous Materials Safety Administration

Enclosure: *Response Options for Third Party Excavators in Enforcement Proceedings*

cc: PHP-60 Compliance Registry
PHP-500 T. Finch (#164966)