

## **WARNING LETTER**

### **VIA E-MAIL TO MR. DARREN EASTERLING**

June 4, 2020

Mr. Darren Easterling  
Avar Construction Systems Inc.  
47375 Fremont Blvd.  
Fremont, CA 94538

**CPF 5-2020-0008E**

Dear Mr. Easterling:

On June 29, 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 March 7, 2018 damage to a natural gas pipeline located near the intersection of Friars Road and HWY 163 in San Diego, California that occurred during horizontal directional drilling operations.

#### **Background**

On March 7, 2018, at approximately 11:05 a.m. PST, Avar Construction Systems Inc. (Avar), a subcontractor to prime contractor, Flatiron Company, struck a San Diego Gas and Electric (SDG&E) 20-inch steel transmission line while operating a horizontal directional drilling tool (HDD), which resulted in a gas release into the atmosphere. Although there were no injuries, fatalities, or fires reported, emergency response and evacuations were required. There was a large-scale evacuation of a shopping mall and an apartment building located within proximity to the incident location, and Friars Road and HWY 163 were closed. There were interruptions to 1,177 customers for multiple hours. The California Public Utilities Commission's investigation found that Avar started drilling prior to the updated Dig Alert Ticket being valid.

As a result of the investigation, it is alleged that you have committed probable violations in Part 196 of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations (CFR). The items inspected 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;**

Prior to and during excavation activity, Avar failed to properly use an available one-call system before excavating to notify operators of underground pipeline facilities of the timing and location of the intended excavation. Specifically, Avar received one dig ticket (A180361468) for excavation activity that expired on March 5, 2018, and therefore needed another ticket for continued excavation activity after that date. Avar received a new ticket (A180650610) but it was not valid until March 8, 2018 at 5:01pm PST. Avar, however, commenced excavation activity on the morning of March 7<sup>th</sup>, more than one day before the dig ticket was valid. As a result, the operator of the underground pipeline facility, SDG&E, was not notified of the timing of the intended excavation pursuant to Section 196.103(a).

Under 49 U.S.C. § 60122 and 49 CFR § 190.223, you are subject to a civil penalty not to exceed \$218,647 per violation per day the violation persists, up to a maximum of \$2,186,465 for a related series of violations. For violation occurring on or after November 27, 2018 and before July 31, 2019, the maximum penalty may not exceed \$213,268 per violation per day, with a maximum penalty not to exceed \$2,132,679. For violation 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.

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 correct the item identified in this letter. Failure to do so will result in Avar Construction Systems Inc. being subject to additional enforcement action.

No reply to this letter is required. If you choose to reply, in your correspondence please refer to **CPF 5-2020-0008E**. Be advised that all material you submit in response to this enforcement action is subject to being 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).

Sincerely,

Dustin Hubbard  
Director, Western  
Pipeline and Hazardous Materials Safety Administration

cc: PHP-60 Compliance Registry  
PHP-500 T. Finch (#167955)