



U.S. Department  
of Transportation  
**Pipeline and Hazardous  
Materials Safety  
Administration**

SEP 01 2016

1200 New Jersey Ave., S.E.  
Washington, DC 20590

## **OVERNIGHT EXPRESS MAIL**

Mr. Michael A. Albert  
Chairman  
Public Service Commission of West Virginia  
201 Brooks Street  
Charleston, WV 25301

Dear Chairman Albert:

On February 4, 2016, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an adequacy evaluation of West Virginia's enforcement of its excavation damage prevention law, Chapter 24C - Underground Facilities Damage Prevention, Article 1 – One-Call System. This letter serves as your official notice of our findings and determination. Based on the evaluation, PHMSA has determined that enforcement of West Virginia's excavation damage prevention law is **INADEQUATE** due to the State responding "no" to the following evaluation criteria:

- 1) Does the State have the authority to enforce its State excavation damage prevention law using civil penalties and other appropriate sanctions for violations?
- 2) In the previous calendar year, did the State assess civil penalties and/or other sanctions for violations?

PHMSA conducted the evaluation pursuant to 49 USC § 60114 and 49 CFR Part 198, Subpart D – State Damage Prevention Enforcement Programs. Our representatives met with Ms. Mary Friend with the West Virginia Public Service Commission, Mr. Tom Taylor with West Virginia 811, and a large number of West Virginia damage prevention stakeholders. During the evaluation, PHMSA asked a series of standard questions regarding actions that the State executed in calendar year 2015 to enforce the West Virginia excavation damage prevention law.

In accordance with 49 CFR Part 198.55, States must be able to demonstrate that they adequately meet the seven federal criteria that PHMSA uses to assess the effectiveness of the State's damage prevention enforcement programs. These criteria evaluate if the State has the authority to enforce its excavation damage prevention law; that the State utilizes its authority to issue civil penalties and other appropriate sanctions for violations of the law; and, that the State is able to provide documented procedures, processes, and data that demonstrates an effective overall damage prevention enforcement program. The evaluation criteria are included in the attachment.

PHMSA representatives stressed during the evaluation, the importance of consistent, fair and balanced enforcement for violations of the one-call law as well as data collection and analysis to evaluate the impact of the enforcement program. PHMSA encourages West Virginia stakeholders to address these issues in any future legislation or rulemakings.

Effective 30 days from receipt of this letter, the determination will go into effect and PHMSA may enforce the Federal excavation standards defined in 49 CFR Part 196 against an excavator who damages a hazardous liquid or natural gas pipeline in West Virginia. It is important to note, this does not mean that West Virginia is unable to continue its enforcement efforts, only that PHMSA now has the authority to enforce its own federal minimum excavation damage standards alongside your current efforts. PHMSA continues to recognize the critical role West Virginia officials play in the safety of their pipeline network, and will continue to work together with West Virginia officials going forward.

Federal civil penalty levels are up to \$205,638 for each violation for each day the violation continues with a maximum civil penalty of \$2,056,380 for any related series of violations. Additionally, States that fail to establish an adequate excavation damage prevention law enforcement program within five years from the date of the final PHMSA determination notice may be subject to a four percent reduction in PHMSA State Base Grant funding. This grant currently funds up to 80 percent of the cost of the pipeline safety program within the West Virginia Public Utilities Commission.

West Virginia has the right under 49 CFR Part 198.59 to submit to PHMSA within 30 days of receiving this letter, a written response contesting the inadequacy determination and request that the determination be withdrawn. Upon receipt of such notification, PHMSA will review all relevant information and will issue a final determination. Please send letters to my attention at the following address:

Mr. Alan K. Mayberry  
Acting Associate Administrator for Pipeline Safety  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Suite E22-207  
Washington, DC 20590

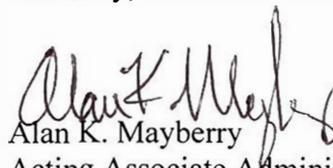
Additionally, PHMSA evaluation of State damage prevention law enforcement will occur annually; however, if West Virginia takes action to establish an adequate enforcement program prior to the annual evaluation, West Virginia may request that PHMSA review and reconsider the State's designation of inadequate.

PHMSA strongly believes that effective damage prevention programs, including enforcement, are best addressed at the State level. Excavation damage continues to be a leading cause of hazardous liquid and natural gas pipeline incidents resulting in fatalities, serious injury, and environmental damage. Damaging a pipeline during excavation poses a serious safety risk to excavators, the public living and working in proximity to the excavation site, and the

environment. Nationwide statistics show that effective enforcement of State excavation damage prevention laws reduces excavation damage and pipeline incidents, and results in increased safety.

PHMSA encourages West Virginia damage prevention stakeholders to work with policy makers to pass legislation that addresses the inadequacies in the State's excavation damage prevention program. We stand ready to assist West Virginia stakeholders in improving enforcement of its excavation damage prevention law. If you have any questions or need additional information, please contact our Damage Prevention Team by email at [excavation.enforcement@dot.gov](mailto:excavation.enforcement@dot.gov) or by phone at (804) 556-4678.

Sincerely,



Alan K. Mayberry  
Acting Associate Administrator for Pipeline Safety

Enclosure

cc: The Honorable Earl Ray Tomblin, Office of the Governor, State of West Virginia  
Ms. Mary Friend, Director, Gas Pipeline Safety Division, Public Service Commission of  
West Virginia  
Mr. Tom Taylor, Executive Director, West Virginia 811