U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

APR 30 2013

The Honorable Tony Dale
Texas House of Representatives
District 136, Room E1.410
P.O. Box 2910
Austin, TX 78768

Dear Mr. Dale:

In a letter to the Pipeline and Hazardous Materials Safety Administration (PHMSA) dated April 26, 2013, you requested an interpretation of whether counties are covered by the statutory language in the Federal Pipeline Safety Statutes, as amended by Section 3 of the Pipeline Safety, Regulatory Certainty and Jobs Creation Act of 2011 (P.L. 112-90) (2011 Act).

You stated that Texas Governor Rick Perry received a March 22, 2013, letter from PHMSA advising the Governor that Texas would no longer be eligible for State Damage Prevention and One Call Grants beginning on January 3, 2014. You also stated that your understanding of the basis for this ineligibility is because the State of Texas One-Call statute allows exemptions for counties and the Texas Department of Transportation. Therefore, you asked if the 2011 Act applies to Texas counties.

Section 3 of the 2011 Act states (emphasis added):

SEC. 3. PIPELINE DAMAGE PREVENTION.

(a) MINIMUM STANDARDS FOR STATE ONE-CALL NOTIFICATION PROGRAMS.—Section 6103(a) is amended to read as follows:

"(a) MINIMUM STANDARDS.—

"(1) IN GENERAL.—In order to qualify for a grant under section 6106, a State one-call notification program, at a minimum, shall provide for—

"(A) appropriate participation by all underground facility operators, including all government operators;

"(B) appropriate participation by all excavators, including all government and contract excavators; and

"(C) flexible and effective enforcement under State law with respect to participation in, and use of, one-call notification systems.

"(2) EXEMPTIONS PROHIBITED.—In order to qualify for a grant under section 6106, a State one-call notification program may not exempt municipalities, State agencies, or their contractors from the one-call notification system requirements of the program.".

(b) STATE DAMAGE PREVENTION PROGRAMS.—Section 60134(a) is amended—

(1) in paragraph (1) by striking ''and'' after the semicolon;

(2) in paragraph (2)(B) by striking ''(b).'' and inserting ''(b); and''; and

(3) by adding at the end the following:

''(3) does not provide any exemptions to municipalities, State agencies, or their contractors from the one-call notification system requirements of the program.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 2 years after the date of enactment of this Act.

Under §§ 3(a)(2) and (b)(3) of the 2011 Act, in order to qualify for the Federal State Damage Prevention and One-Call grants, the State of Texas must remove exemptions for municipalities, State agencies, or their contractors from the One-Call notification system from its State laws. PHMSA interprets the law to include exemptions for all local and State governments, including towns, townships, boroughs, counties, parishes, and regional governments, or similar entities.

I hope that this information is helpful to you. If I can be of further assistance, please contact me at 202-366-0434.

Sincerely,

John A. Gale
Director, Office of Standards
and Rulemaking

TONY DALE
STATE REPRESENTATIVE
DISTRICT 136

April 26, 2013

Mr. Jeffry D. Wiese
Associate Administrator for Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
East Building, 2nd Floor
Mail Stop: E24-455
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re: Request for Official Opinion; Eligibility of the State of Texas for State Damage Prevention and One Call Grants

Dear Mr. Wiese:

I recently received a copy of the letter from Deputy Administrator Timothy Butters to Governor Rick Perry dated March 22, 2013 advising the Governor that Texas would no longer be eligible for State Damage Prevention and One Call Grants beginning on January 3, 2014. It is my understanding that the basis for this ineligibility is the exemptions in the Texas one-call statute for counties and the Texas Department of Transportation. I am currently sponsoring a bill in our Legislature that would remove these exemptions, but have encountered some opposition from county governments. The basis of this opposition is the counties' believe that they are not included in the statutory language of the Pipeline Safety Act, as amended by the Pipeline Safety, Regulatory Certainty and Jobs Creation Act of 2011.

The purpose of my letter is to request an official opinion that counties are covered by the statutory language, as amended. This opinion would greatly facilitate the response to the county opposition. Because the Texas legislative session ends on May 28th, time is of the essence or the bill will fail due to a lack of time. Your assistance in obtaining a quick response to this request would be appreciated. I will continue my efforts to advance the bill while awaiting the official opinion.

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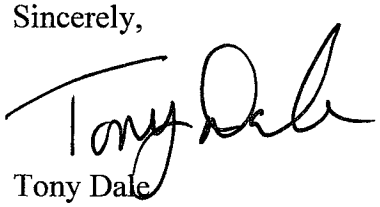
Your assistance is greatly appreciated. If you have any questions, please contact my office at 512-463-0696.

Sincerely,



Tony Dale
State Representative
House District 136

cc: Congressman John Carter