



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

**1200 New Jersey Avenue, SE
Washington, DC 20590**

March 22, 2021

Via Email

Mr. Dallas Winslow
Chairman
Delaware Public Service Commission
861 Silver Lake Blvd., Suite 100
Dover, DE 19904

Dear Chairman Winslow:

On November 16, 2020, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the Delaware Public Service Commission (PSC)'s enforcement of the Delaware excavation damage prevention law. PHMSA conducted this evaluation pursuant to 49 United States Code § 60114 and 49 Code of Federal Regulations (CFR) Part 198, Subpart D—State Damage Prevention Enforcement Programs. Based on this evaluation, PHMSA has determined that the enforcement of the Delaware excavation damage prevention law is “inadequate.”

We understand that Delaware has a new excavation damage prevention law and that, in October 2020, regulatory efforts were finalized to improve Delaware's enforcement program. We are encouraged by these efforts and believe that, when implemented, the changes could result in a determination of adequacy. Please be advised that if Delaware fails to establish an adequate excavation damage prevention enforcement program by December 28, 2021, the state may be subject to a four percent reduction in PHMSA's State Base Grant funding. This grant currently provides funding for up to 80 percent of the qualified costs of the pipeline safety program incurred by the Delaware PSC. Also, excavators in Delaware who fail to comply with excavation safety requirements and damage a pipeline may face federal enforcement actions.

Delaware may, under 49 CFR § 198.59, submit to PHMSA a written response within 30 days from receipt of this notice challenging the determination of inadequacy by providing additional information relevant to the determination. Upon receipt of such a response, PHMSA will review all additional information provided and will issue a final determination. The response must be sent to:

Zach Barrett
Director, State Programs Division
Office of Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
3700 S. MacArthur Blvd
Suite B, PHP-50
Oklahoma City, OK 73179-7612

If Delaware does not submit such a response, this notice will serve as PHMSA's final determination under 49 CFR § 198.61. PHMSA's evaluation of Delaware's enforcement of its damage prevention law will occur annually; however, if Delaware acts to establish an adequate enforcement program prior to the annual evaluation, Delaware may request that PHMSA review and reconsider this designation. PHMSA stands ready to continue working with your state on improving enforcement of your excavation damage prevention law.

As you are aware, excavation damage continues to be a leading cause of pipeline failures, some of which have resulted in fatalities, serious injuries, and environmental damage. Nationwide statistics show that effective enforcement of state damage prevention laws reduces excavation damage and pipeline incidents, resulting in enhanced public safety.

Should you or your staff have any questions regarding this letter, please contact Annmarie Robertson, PHMSA Senior Program Manager, at (317) 964-1670 or by email at annmarie.robertson@dot.gov.

Sincerely,



Massoud Tahamtani
Deputy Associate Administrator, Policy and Programs
Office of Pipeline Safety