



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

1200 New Jersey Avenue, SE
Washington, DC 20590

March 26, 2021

Via Email

Mr. Jimmy Patronis
Florida State Fire Marshal
8600 Hidden River Parkway, Ste 200
Tampa, FL 33637

Dear Fire Marshal Patronis:

On November 5, 2020, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the enforcement of the Florida excavation damage prevention law. PHMSA conducted this evaluation pursuant to 49 United States Code (USC) § 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 Florida excavation damage prevention law is “inadequate.”

PHMSA evaluates the Florida excavation damage prevention enforcement program based on the criteria detailed in 49 CFR 198.55 and scores Florida's compliance with those criteria. PHMSA would like to bring to your attention, the requirements of 49 CFR 198.55(a)(3) through 49 CFR 198.55(a)(5). Specifically, to meet the requirements of § 198.55(a)(3), Florida must assess civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance and make publicly available information that demonstrates the effectiveness of the enforcement program. To meet the requirements of § 198.55(a)(4), Florida must develop a reliable mechanism (e.g., mandatory reporting, complaint-driven reporting) for learning about excavation damage to underground facilities. Finally, to meet the requirements of § 198.55(a)(5), Florida must employ excavation damage investigation practices that are adequate to determine the responsible party or parties when excavation damage to underground facilities occurs.

We understand that Florida has a new excavation damage prevention law that became effective July 1, 2020, and that efforts are underway to improve Florida's enforcement program. We are encouraged by these efforts and believe that the changes could result in a future determination of adequacy. Please be advised that if Florida fails to establish an adequate excavation damage prevention enforcement program by December 22, 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 Florida

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PSC. Also, excavators in Florida who fail to comply with excavation safety requirements and damage a pipeline may face federal enforcement actions.

Florida 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:

Mr. 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

If Florida does not submit such a response, this notice will serve as PHMSA's final determination under 49 CFR § 198.61. PHMSA's evaluation of Florida's enforcement of its damage prevention law will occur annually; however, if Florida acts to establish an adequate enforcement program prior to the annual evaluation, Florida 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,

A handwritten signature in blue ink, appearing to read 'Massoud Tahamtani', with a long, sweeping horizontal line extending to the right.

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

cc: Gary F. Clark, Chairman, Florida Public Service Commission
Mark Sweet, Executive Director, Sunshine 811