



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

1200 New Jersey Avenue, SE
Washington, DC 20590

September 25, 2020

Via Email

Mr. Dan Scripps
Chairman
Michigan Public Service Commission
7109 West Saginaw Highway
Lansing, MI 48917

Dear Chairman Scripps:

On September 10, 2020, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the Michigan Public Service Commission's enforcement of the Michigan State 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 Michigan excavation damage prevention law is "adequate."

Notwithstanding this determination, PHMSA would like to bring to your attention an issue involving the requirements of 49 CFR 198.55(a)(7). This is one of the evaluation criteria for a states' damage prevention enforcement program and relates to exemptions for excavators from a state damage prevention law. The MISS DIG Underground Facility Damage Prevention and Safety Act (Act), § 460.723(m), defines "Excavation" as "moving, removing, or otherwise displacing earth, rock, or other material below existing surface grade with power tools or power equipment, including, but not limited to, grading, trenching, tiling, digging, drilling, boring, augering, tunneling, scraping, cable or pipe plowing, and pile driving; and wrecking, razing, rending, moving, or removing a structure or mass of materials." Based on this definition, persons digging with hand tools, and other soft excavation equipment are excluded from the notification requirements, and possibly other requirements, established in the Act. During CY 2019, 901 of the 4,117 excavation damages to gas distribution pipelines in Michigan occurred using non-powered tools or equipment. This represents approximately 22-percent of all gas distribution pipeline excavation damages. PHMSA is concerned about the impact this exemption may have on public safety and appreciates a response relative to this issue within 60 days from the date of this letter.

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.

Chairman Scripps
Page 2

Should you or your staff have any questions regarding this letter, please contact Mr. David Appelbaum, PHMSA State Evaluator, at (202) 617-6329 or by email at David.Appelbaum@dot.gov.

Sincerely,

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

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

cc: Mr. David Chislea, Manager, Gas Operations Section
Michigan Public Service Commission