



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

1200 New Jersey Avenue, SE
Washington, DC 20590

April 6, 2021

Via Email

Mr. Declan Kingland
Associate Director, Office of Federal and Regional Affairs
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Suite 324
Washington, DC 20004

Dear Mr. Kingland:

On December 16, 2020, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the District of Columbia's (District) enforcement of its 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 District's excavation damage prevention law is "inadequate."

PHMSA evaluates the District's excavation damage prevention enforcement program based on the criteria detailed in 49 CFR 198.55 and scores the District'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), the District 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), the District 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), the District 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 as of March 16, 2021, the District has a new excavation damage prevention law establishing enhanced administrative enforcement authority for the Mayor, who may delegate the authority to District agencies. We are encouraged by the passage of the new law and believe that, when implemented, the changes could result in a determination of adequacy.

Please be advised that if the District fails to establish an adequate excavation damage prevention enforcement program by August 24, 2021, the District 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 Public Service Commission of the District of Columbia. Also, excavators in the District who fail to comply with excavation safety requirements and damage a pipeline may face federal enforcement action.

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

PHMSA appreciates your dedication to safety. 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.

Mr. Declan Kingland

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Should you or your staff have any questions regarding this letter, please contact Sam Hall, PHMSA Senior Program Manager, at (804) 551-3876 or by email at sam.hall@dot.gov.

Sincerely,



Massoud Tahamtani

Deputy Associate Administrator, Policy and Programs
Office of Pipeline Safety

cc: Leslie Camacho, Program Analyst, Department of Consumer and Regulatory Affairs
Katherine Kelley, Office of the Attorney General for the District of Columbia
Barry Kreiswirth, General Counsel, Office of City Administrator
Jonathan Kuhl, Chief of External Affairs, Department of Consumer and Regulatory
Affairs
Kimberly Lincoln-Stewart, District of Columbia Public Service Commission
Cheri Hance Staples, Office of General Counsel