



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

1200 New Jersey Avenue, SE
Washington, DC 20590

April 6, 2021

Via Email

Ms. Rebecca Cameron Valcq
Chairperson
Public Service Commission of Wisconsin
North Tower, 6th Floor
Hill Farms State Office Building
4822 Madison Yards Way
Madison, WI 53705-9100

Dear Chairperson Valcq:

On October 6, 2020, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the Wisconsin Public Service Commission (PSC) advisory panel's 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 Wisconsin excavation damage prevention law is "inadequate."

PHMSA evaluates a state's excavation damage prevention enforcement program based on the criteria detailed in 49 CFR 198.55 and scores the state's compliance with those criteria. PHMSA would like to bring to your attention, the requirements of 49 CFR 198.55(a)(3) and 49 CFR 198.55(a)(5). Specifically, to meet the requirements of § 198.55(a)(3), Wisconsin 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)(5), Wisconsin must implement an enforcement model that holds both pipeline operators and excavators accountable for violations of the state excavation damage prevention law.

We understand that efforts are underway to improve Wisconsin's enforcement program that, if implemented, could result in a determination of adequacy. We are encouraged by the progress. Please be advised that if Wisconsin 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 Wisconsin PSC. Also, excavators in Wisconsin who fail to comply with excavation safety requirements and damage a pipeline may face federal enforcement actions.

Wisconsin 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 Wisconsin does not submit such a response, this notice will serve as PHMSA's final determination under 49 CFR § 198.61. PHMSA's evaluation of Wisconsin's enforcement of its damage prevention law will occur annually; however, if Wisconsin acts to establish an adequate enforcement program prior to the annual evaluation, Wisconsin 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 Steven Fischer, PHMSA Senior Program Manager, at (713) 548-4838 or by email at Steven.Fischer@dot.gov.

Sincerely,



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

cc: Ms. Kate Christensen, Bureau Director, Wisconsin Public Service Commission
Mr. Alex Kirschling, Pipeline Safety Program Manager, Wisconsin Public Service Commission
Mr. Bennet G. Zweifel, President/CEO, Diggers Hotline, Inc.