



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

1200 New Jersey Avenue, SE
Washington, DC 20590

August 26, 2020

Via Email

Mr. Wayne Christian
Chairman/Railroad Commissioner
Railroad Commission of Texas
PO Box 12967
Austin, TX 78711-2967

Dear Chairman Christian:

On June 12, 2020, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the Railroad Commission of Texas' (Commission) enforcement of the Texas 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 Texas 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 involves exemptions for excavators from the states' damage prevention laws. Section 251.002 (5) of the State's Underground Facility Damage Prevention and Safety Law defines "'Excavate' means to use explosives or a motor, engine, hydraulic or pneumatically powered tool, or other mechanized equipment of any kind and includes auguring, backfilling, boring, compressing, digging, ditching, drilling, dragging, dredging, grading, mechanical probing, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling to remove or otherwise disturb soil to a depth of 16 or more inches." During CY 2019, approximately 17 percent (1,596 of the 9,444) of all excavation damages to gas distribution pipelines in Texas occurred at depths less than 16 inches. A review of similar data since 2016 shows a fairly consistent trend over the last several years. PHMSA is concerned about the impact this exemption may have on safety given the proximity of distribution pipelines to the public. PHMSA 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 Christian

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: Mrs. Stephanie Weidman, Pipeline Safety Director,
Railroad Commission of Texas