



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

1200 New Jersey Avenue, SE
Washington, DC 20590

September 29, 2023

Via Email

Commissioner Keith Kurber, Chairman
Regulatory Commission of Alaska
701 West 8th Avenue, Suite 300
Anchorage, AK 99501-3469

Dear Chairman Kurber:

On September 29, 2023, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of Alaska'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 Alaska 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. There are four criteria that Alaska has not fully implemented to meet the requirements of 49 CFR § 198.55. Specifically, to meet the requirements of § 198.55(a)(2), Alaska must designate an agency or other body as the authority responsible for enforcement of the excavation damage prevention law. To meet the requirements of § 198.55(a)(3), Alaska 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), Alaska 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), Alaska must employ excavation damage investigation practices that are adequate to determine the responsible party or parties when excavation damage to underground facilities occurs.

Excavators in Alaska who fail to comply with federal excavation safety requirements and damage a pipeline may face federal enforcement actions.

Alaska 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:

Chairman Kerber

Page 2

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

Or to: zach.barrett@dot.gov

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

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,



Zach Barrett
Director, State Programs

cc: Ms. Louise Frost, President, 811 Alaska Digline, Inc.