



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

1200 New Jersey Avenue, SE  
Washington, DC 20590

October 3, 2023

Via Email

Tony Marino  
Executive Officer  
Underground Infrastructure Directorate  
Office of Energy Infrastructure Safety  
715 P Street, 20th Floor  
Sacramento, CA 95814

Dear Mr. Marino:

On September 28, 2023, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the California Underground Facilities Safe Excavation Board's (Board) enforcement of the California State excavation damage prevention law. PHMSA conducted this evaluation pursuant to 49 United States Code (USC) § 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 California excavation damage prevention law is "adequate."

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. Although the Board's enforcement program was deemed "adequate" for calendar year (CY) 2022, this is not a finding by PHMSA that the state program has no room to further improve the program's effectiveness. Accordingly, PHMSA would like to bring to your attention an area of improvement involving the requirements of 49 CFR 198.55(a)(3). This is one of the evaluation criteria for a state's program and assesses, in part, whether the state is "assessing civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance." In CY 2022, California's gas distribution operators reported a total of 4,795 excavation damages to their pipeline facilities in the annual reports submitted to PHMSA. Based on the information gained during our evaluation, there were no civil penalties issued related to the above damages. PHMSA does acknowledge the Board did issue two civil penalties, and 22 alternative sanctions, to parties not regulated by PHMSA. The number of civil penalties issued in CY 2022 does not demonstrate that the State is regularly and consistently using its enforcement authority and imposing appropriate sanctions for violations of the State excavation damage prevention law.

On October 4, 2021, PHMSA communicated these similar concerns. In our view, and specific to PHMSA-regulated facilities, there has been no demonstrative increase in the application of

effective enforcement processes since then. Therefore, to avoid a potential determination of “inadequacy” in the future, PHMSA encourages the Board to evaluate how it may improve its program and provide an update to PHMSA relative to these issues within 60 days from receipt of this letter. Also note, in the aforementioned October 4, 2021, letter, PHMSA requested a 60-day response from the Board. PHMSA never received a timely response.

PHMSA appreciates your dedication to pipeline safety. As you are aware, excavation damage continues to be a leading cause of pipeline failures, some of which result 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,

A handwritten signature in blue ink, appearing to read "Zach Barrett", with a stylized, flowing script.

Zach Barrett  
Director, State Programs

cc: Terrence Eng, Program Manager, Gas Safety and Reliability Branch,  
California Public Utilities Commission  
James Hosler, Assistant Deputy Director, Chief of Pipeline Safety,  
Office of the State Fire Marshal