



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

1200 New Jersey Avenue, SE  
Washington, DC 20590

September 25, 2023

Via Email

Ms. Charlotte A. Mitchell  
Chair  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27696-4325

Dear Chair Mitchell:

On June 22, 2023, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the North Carolina Utilities Commission's (NCUC) enforcement of the North Carolina 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 North Carolina's 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 NCUC'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, North Carolina's gas distribution operators reported a total of 3,179 excavation damages to their pipeline facilities in the annual reports submitted to PHMSA. Based on the information gained during our evaluation, only 20 of these damages were submitted as complaints to the Underground Damage Prevention Review Board, though all 20 of those led to the assessment of a civil penalty. Additionally, of the 3,179 damages reported, no enforcement actions were pursued for the 812 excavation damages where the apparent root cause was attributed to pipeline operators for not having complied with their responsibilities in accordance with the North Carolina's Underground Utility Safety and Damage Prevention Act and the Pipeline Safety Regulations.

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On November 3, 2020, PHMSA communicated this same concern. In our view, there has been no demonstrative increase in the application of effective enforcement processes and no discernable improvement in excavation safety since then. To avoid a potential determination of “inadequacy” in the future, PHMSA encourages the NCUC to evaluate how it may improve its program and provide an update to PHMSA relative to this issue within 60 days from receipt of this letter.

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](mailto:David.Appelbaum@dot.gov).

Sincerely,



Zach Barrett  
Director, State Programs

cc: Mr. Stephen Wood, Gas Pipeline Safety Manager, NCUC  
Mr. Louis Panzer, Executive Director, North Carolina 811