



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

1200 New Jersey Avenue, SE  
Washington, DC 20590

October 5, 2023

Via Email

Ms. Codi Gregg  
Executive Director  
South Dakota One Call Notification Board  
South Dakota 811  
P.O. Box 187  
Rapid City, SD 57709

Dear Ms. Gregg:

On July 31, 2023, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of South Dakota's enforcement of its 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 South Dakota 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). Specifically, to meet the requirements of § 198.55(a)(3), South Dakota must assess civil penalties and other appropriate sanctions for violations of the excavation damage prevention law at levels sufficient to deter noncompliance and make publicly available information that demonstrates the effectiveness of the enforcement program. In calendar year (CY) 2022, South Dakota had only seven complaints filed for violations of its excavation damage prevention law, notwithstanding the 489 reported excavation damages to natural gas distribution pipelines. Concurrently, records indicate that there has been no discernible improvement in excavation safety over time.

Frustrating the excavation damage prevention enforcement process, South Dakota, which is complaint-driven, provides, in the on-line "Complaint Process and Procedures" form, the following: "The South Dakota One-Call Notification Board strongly encourages parties involved in a dispute to discuss and resolve as many issues as possible without the utilization of the complaint process. When resolution cannot be obtained, the following legal process is available to either party...." PHMSA believes this text conflicts with § 198.55(a)(4) by inhibiting stakeholders from the requirement to provide a reliable mechanism for the enforcement authority to learn about excavation damage to underground facilities.

Please be advised that if South Dakota fails to re-establish an adequate excavation damage prevention enforcement program, the South Dakota Public Utilities Commission (SD PUC) may be subject to a four percent reduction in PHMSA's State Base Grant funding. This grant currently

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provides funding for up to 80 percent of the qualified costs of the pipeline safety program incurred by the SD PUC. Also, excavators in South Dakota who fail to comply with excavation safety requirements and damage a pipeline may face Federal enforcement action.

South Dakota 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 me at the following address with a PDF of the signed document sent to [zach.barrett@dot.gov](mailto:zach.barrett@dot.gov) and [don.martin@dot.gov](mailto:don.martin@dot.gov)

Mr. Zach Barrett  
Director, State Programs Division  
Office of Pipeline Safety – PHP-50  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
3700 S. MacArthur Blvd., Suite B  
Oklahoma City, OK 73179

If South Dakota does not submit such a response, this notice will serve as PHMSA's final determination under 49 CFR § 198.61. PHMSA's evaluation of the South Dakota's enforcement of its damage prevention law will occur annually; however, if South Dakota acts to sufficiently establish an adequate enforcement program prior to the annual evaluation, the state 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 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](mailto:David.Appelbaum@dot.gov).

Sincerely,



Zach Barrett  
Director, State Programs

cc: Mary Zanter, Pipeline Safety Program Manager, SD PUC