



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

1200 New Jersey Avenue, SE
Washington, DC 20590

November 21, 2023

Via Email

The Honorable Sean D. Reyes
Attorney General of Utah
350 North State Street, Suite 230
Salt Lake City, UT 84114-2320

Dear Attorney General Reyes:

On November 16, 2023, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the Utah Attorney General Office's (AGO) 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 Utah excavation damage prevention law is “inadequate.”

In accordance with 49 CFR Part 198.55, there are several criteria that PHMSA uses to assess the effectiveness of a state's damage prevention enforcement program. The evaluation criteria and Rule brief are attached for reference.

The areas that impacted the overall rating of the state's program are:

- Although Utah issued 112 civil penalties in CY 2022, PHMSA expects the AGO to demonstrate the impact of that enforcement and maintain records that demonstrate a relationship between the State's enforcement activities and the rate of excavation damage incidents. Additionally, PHMSA expects the AGO's enforcement program to generally make excavation damage prevention law enforcement information and statistics available to the public, such as a website.
- PHMSA expects state enforcement programs to be balanced with regard to how they apply its enforcement authority. PHMSA expects enforcement programs to be focused on the compliance responsibilities of both excavators and pipeline operators. Additionally, PHMSA is interested in states' excavation damage investigation practices, and especially if these practices include the opportunity for input from all parties and if there is due process in place for those accused of violating the law. In CY 2022, Utah's gas distribution operators reported a total of 1,330 excavation damages to their pipeline facilities in the annual reports submitted to PHMSA, of which, 290 were attributed to pipeline operators for not having complied with their responsibilities in accordance with Utah's excavation damage prevention law.

Though the State issued 112 civil penalties, none of the civil penalties assessed were against pipeline operators.

- The requirements of 49 CFR 198.55(a)(6)(iii)(B) is one of the evaluation criteria for a state's program and assesses if the State law requires an excavator who causes damage to a PHMSA-regulated pipeline that results in a release of natural or other gas or hazardous liquid to promptly report the release to emergency responders by calling the 911 emergency telephone number or another emergency telephone number. Utah Code, 54-8a-7(1) states: "If an excavator contacts or damages an underground facility, the excavator shall: (a) immediately notify the appropriate operator and then proceed in a manner that is reasonably calculated to avoid further damage to the underground facility, and (b) immediately call 911 if the excavation may result in an immediate risk to human life." The statutory mandate found in 49 USC 60114(d)(3)(b), which is codified at 49 CFR 198.55(a)(6)(iii)(B), is explicit, and does not permit excavators the discretion to determine what defines "an immediate risk to human life."
- PHMSA expects the AGO or other supporting organization to maintain documentation that demonstrates the impact of exemptions from excavation notice requirements in state law. This documentation should include data or other evidence that demonstrates the impact on the rate of excavation damage to pipelines and other underground infrastructure. The AGO should then be able to use this information on an ongoing basis to improve the excavation damage prevention program.

Please be advised that if Utah fails to re-establish an adequate excavation damage prevention enforcement program, the Utah Department of Commerce (UTDC) may be subject to a four percent reduction in PHMSA's State Base Grant funding. This grant currently provides funding for up to 80 percent of the qualified costs of the pipeline safety program incurred by the UTDC. Also, excavators in Utah who fail to comply with excavation safety requirements and damage a pipeline may face Federal enforcement action.

Utah 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 and 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 Utah 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 Utah's enforcement of its damage

prevention law will occur annually; however, if Utah 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 Senior Transportation Specialist, 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 long, sweeping flourish extending to the right.

Zach Barrett
Director, State Programs

cc: Patricia E. Schmid, Assistant Attorney General representing the Division of Public Utilities
Al Zadeh, Manager, Pipeline Safety Section, UTDC