



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

1200 New Jersey Avenue, SE  
Washington, DC 20590

October 16, 2023

Via Email

Mr. Jerry Poage  
Executive Director  
West Virginia 811  
206 Berkeley Street  
Charleston, WV 25302

Dear Mr. Poage:

On October 13, 2023, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the West Virginia Damage Prevention Board's (Board) enforcement of the West Virginia 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 West Virginia 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, West Virginia's gas distribution operators reported a total of 278 excavation damages to their pipeline facilities in the annual reports submitted to PHMSA. Based on the information gained during our evaluation, only seven of these damages were referred for some type of enforcement action, none of which received a civil penalty. Additionally, of the 278 excavation damages reported, there were only two referrals for the 77 damages where the apparent root cause was attributed to pipeline operators for not having complied with their responsibilities in accordance with West Virginia's One-Call law. Again, no civil penalties were issued. The lack of enforcement actions issued in CY 2022 does not demonstrate that the State is regularly, consistently, or equitably using its enforcement authority and imposing appropriate sanctions for violations of the State excavation damage prevention law.

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On March 24, 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 and no discernable improvement in excavation safety 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.

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: Mary Friend, Director, Pipeline Safety, West Virginia Public Service Commission