



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

1200 New Jersey Avenue, SE  
Washington, DC 20590

August 14, 2024

Via Email

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

Dear Chair Mitchell:

On August 13, 2024, 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) 2023, 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 2023, North Carolina's gas distribution operators reported a total of 3,270 excavation damages to their pipeline facilities in the annual reports submitted to PHMSA. Based on the information gained during our evaluation, only 28 of these damages were submitted as complaints to the Underground Damage Prevention Review Board, though 18 of those led to the assessment of a civil penalty. Additionally, of the 3,270 damages reported, only one enforcement action was pursued for the 822 excavation damages where the apparent root cause was attributed to pipeline operator 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.

On November 3, 2020, and again on September 25, 2023, 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 since this topic was last raised. Therefore, 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 these issues 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.

This year, PHMSA is requesting that every state review its laws, definitions of “excavation”, and relevant best practices to determine if onshore submerged facilities, dredging and other related maritime/underwater excavation activities are included. This request relates to National Transportation Safety Board recommendations after a 16-inch liquid propane pipeline was damaged by a dredging vessel on August 21, 2020.<sup>1</sup> Please ensure that your state has the necessary legal backing and procedures in place to preserve public safety during dredging operations and/or other related maritime/underwater excavation activities.

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 horizontal line extending to the right.

Zach Barrett  
Director, State Programs

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

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<sup>1</sup> See NTSB Report MAR21/05 dated December 7, 2021, *Hazardous Liquid Pipeline Strike and Subsequent Explosion and Fire aboard Dredging Vessel Waymon Boyd*