



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

1200 New Jersey Avenue, SE
Washington, DC 20590

August 8, 2024

Via Email

Kevin Tubberville
Chairman
Underground Utility Damage Enforcement Board
C/O Ryan McGehee
502 Deaderick Street, 4th Floor
Nashville, TN 37243

Dear Chairman Tubberville:

On August 8, 2024, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the Tennessee Public Utility Commission's (TPUC) enforcement of the Tennessee State 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 Tennessee 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 TPUC's enforcement program was deemed "adequate" for calendar year (CY) 2023, this does not mean PHMSA did not find 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)(5) which relates to how a state enforcement program applies its enforcement authority. As described in the preamble to the final rule for this requirement, PHMSA expects state enforcement programs to be balanced with regard to how they apply their enforcement authority, focusing on the compliance responsibilities of excavators, utility owners and pipeline operators.

In CY 2023, Tennessee's gas distribution operators reported a total of 3,438 excavation damages to their pipeline facilities in the annual reports submitted to PHMSA, of which, 848 were attributed to pipeline operators for not having complied with their responsibilities in accordance with the Tennessee Underground Utility Damage Prevention Act (Act), specifically, Tennessee Code Annotated § 65-31-108. Though TPUC received 226 complaints for violations of the Act, and appropriately issued 26 civil penalties, none of the enforcement actions taken were against the pipeline operator.

On August 10, 2020, and again on September 26, 2023, PHMSA communicated similar concerns regarding this criterion to the TPUC. In our view, and specific to PHMSA-regulated facilities, there has been no demonstrative increase in the application of equitable enforcement since this topic was last raised. PHMSA does not typically deem a program “inadequate” based on this criterion alone. Rather, a finding of inadequacy is based on the totality of the review of a program, including its history of properly implementing the criteria described in 49 CFR § 198.55(a) and its history of appropriately responding to areas in need of improvement previously identified by PHMSA. Therefore, to avoid a potential determination of “inadequacy” in the future, PHMSA encourages TPUC 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.

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, 2020.¹ 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: Ms. Stacy Balthrop, Director, Consumer Services Division, TPUC

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