



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

1200 New Jersey Avenue, SE
Washington, DC 20590

August 20, 2024

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 June 25, 2024, 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 “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 AGO'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.

The areas that impacted the overall rating of the Utah's program for CY 2023 are:

- PHMSA expects state enforcement programs to generally make excavation damage prevention law enforcement information and statistics available to the public, such as having that information available via a website. PHMSA does not expect states to violate any state laws, jeopardize any ongoing enforcement cases, or post information that would violate the privacy of individuals as defined by state or federal law. Currently, Utah makes some information available to the public, but overall lacks visibility into the State's enforcement actions and results of the program.
- 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 2023, Utah's gas

distribution operators reported a total of 1,383 excavation damages to their pipeline facilities in the annual reports submitted to PHMSA, of which, 362 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 103 civil penalties during CY 2023, none of the civil penalties assessed were against pipeline operators. Additionally, the State does not have a thoroughly documented approach for consistently determining when enforcement action is to be taken.

- 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 911 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" before calling 911 if there has been a release.
- 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.

PHMSA does not typically deem a program "inadequate" based on any one 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. PHMSA recognizes that all the 103 civil penalties issued in CY 2023 were issued by Dominion Energy pursuant to the authority provided by Utah Code Ann. § 54-8a-12(1). PHMSA also understands that Dominion Energy is no longer issuing civil penalties. Therefore, to avoid a potential determination of "inadequacy" in the future, PHMSA encourages the AGO to evaluate how it may improve its program, with an emphasis on the continuation of effective enforcement, 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 the National Transportation Safety Board’s 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: Patricia E. Schmid, Assistant Attorney General representing the Division of Public Utilities
Al Zadeh, Manager, Pipeline Safety Section, Utah Department of Commerce

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