



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

1200 New Jersey Avenue, SE
Washington, DC 20590

August 13, 2024

Via Email

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

Dear Mr. Poage:

On August 12, 2024, 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) 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, West Virginia's gas distribution operators reported a total of 246 excavation damages to their pipeline facilities in the annual reports submitted to PHMSA, of which, 52 were attributed to pipeline operators for not having complied with their responsibilities in accordance with West Virginia's one-call law. Though the Board received 48 complaints for violations of the one-call law, and appropriately issued three civil penalties, none of the enforcement actions taken were against the pipeline operator.

On March 24, 2021, and again on October 16, 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 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 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.

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 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 long, sweeping horizontal line extending to the right.

Zach Barrett
Director, State Programs

cc: Mary Friend, Director, Pipeline Safety, West Virginia Public Service Commission
Brandon Hahn, Deputy Director, West Virginia 811

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