



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

SEP 01 2016

1200 New Jersey Ave., S.E.  
Washington, DC 20590

**OVERNIGHT EXPRESS MAIL**

Mr. Joshua B. Epel, Chair  
Colorado Public Utilities Commission  
1560 Broadway, Suite 250  
Denver, CO 80202

Dear Chairman Epel:

On February 9, 2016, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an adequacy evaluation of Colorado's enforcement of its excavation damage prevention law, Colorado Revised Statutes, Title 9 Safety – Industrial and Commercial, Article 1.5 Excavation Requirements. This letter serves as your official notice of our findings and determination. Based on the evaluation, PHMSA has determined that the enforcement of Colorado's excavation damage prevention law is **INADEQUATE** due to the State responding "no" to the following evaluation criterion:

- 1) In the previous calendar year, did the State assess civil penalties and/or other sanctions for violations?

PHMSA conducted the evaluation pursuant to 49 USC § 60114 and 49 CFR Part 198, Subpart D – State Damage Prevention Enforcement Programs. Our representatives met with Mr. Joseph Molloy, Chief, Gas Pipeline Safety, Colorado Public Utilities Commission and Mr. J.D. Maniscalco, Colorado 811. PHMSA asked a series of standard questions regarding actions the State took in calendar year 2015 to enforce the State excavation damage prevention law.

In accordance with 49 CFR Part 198.55, States must be able to demonstrate that they adequately meet the seven federal criteria that PHMSA uses to assess the effectiveness of the State's damage prevention enforcement programs. These criteria evaluate if the State has the authority to enforce its excavation damage prevention law; that the State utilizes its authority to issue civil penalties and other appropriate sanctions for violations of the law; and, that the State is able to provide documented procedures, processes, and data that demonstrates an effective overall damage prevention enforcement program. The evaluation criteria are included in the attachment.

PHMSA representatives stressed during the evaluation, the importance of consistent, fair and balanced enforcement for violations of the one-call law and data collection and analysis to evaluate the impact of the enforcement program. PHMSA applauds Colorado's data collection and analysis program and urges Colorado stakeholders to plan to also use data to evaluate any

enforcement program that might be developed in the future. PHMSA encourages Colorado stakeholders to consider these issues in any future legislation or rulemakings.

During the evaluation, PHMSA representatives also noted areas of concern that impact the adequacy of damage prevention enforcement. The Colorado one-call law does not require a notification to 911 or a similar emergency response number if a pipeline facility is damaged and a release occurs. This is a requirement of the 49 USC § 60114 and is found in PHMSA's Final Rule in this matter. According to 49 CFR Part 198.55 (a)(6):

- iii. An excavator who causes damage to a pipeline facility:
  - A. Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and
  - B. If the damage results in the escape of any PHMSA regulated natural and other gas or hazardous liquid, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.

Effective 30 days from receipt of this letter, the determination will go into effect and PHMSA may enforce the Federal excavation standards defined in 49 CFR Part 196 against an excavator who damages a regulated hazardous liquid or natural gas pipeline in Colorado. It is important to note, this does not mean that Colorado is unable to continue its enforcement efforts, only that PHMSA now has the authority to enforce its own federal minimum excavation damage standards alongside your current efforts. PHMSA continues to recognize the critical role Colorado officials play in the safety of their pipeline network, and will continue to work together with Colorado officials going forward.

Federal civil penalty levels are up to \$205,638 for each violation for each day the violation continues with a maximum civil penalty of \$2,056,380 for any related series of violations. Additionally, States that fail to establish an adequate excavation damage prevention law enforcement program within five years from the date of the final PHMSA determination notice, may be subject to a four percent reduction in PHMSA State Base Grant funding. This grant currently funds up to 80 percent of the cost of the pipeline safety program within the Colorado Public Utilities Commission.

Colorado has the right under 49 CFR Part 198.59 to submit to PHMSA within 30 days of receiving this letter, a written response contesting the inadequacy determination and request that the determination be withdrawn. Upon receipt of such notification, PHMSA will review all relevant information and will issue a final determination. Please send letters to my attention at the following address:

Mr. Alan K. Mayberry  
Acting Associate Administrator for Pipeline Safety  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Suite E22-207  
Washington, DC 20590

Additionally, the PHMSA evaluation of State damage prevention law enforcement will occur annually; however, if Colorado takes action to establish an adequate enforcement program prior to the annual evaluation, Colorado may request that PHMSA review and reconsider the State's designation of inadequate.

PHMSA strongly believes that effective damage prevention programs, including enforcement, are best addressed at the State level. Excavation damage continues to be a leading cause of hazardous liquid and natural gas pipeline incidents resulting in fatalities, serious injury, and environmental damage. Damaging a pipeline during excavation poses a serious safety risk to excavators, the public living and working in proximity to the excavation site, and the environment. Nationwide statistics show that effective enforcement of State excavation damage prevention laws reduces excavation damage and pipeline incidents, and results in increased safety.

PHMSA encourages Colorado damage prevention stakeholders to work with policy makers to pass legislation that addresses the inadequacies in the State's excavation damage prevention program. We appreciate the dedication to safety and damage prevention shown over many years by the Colorado damage prevention stakeholders and stand ready to assist in improving enforcement of the State excavation damage prevention law. If you have any questions or need additional information, please contact our Damage Prevention Team by email at [excavation.enforcement@dot.gov](mailto:excavation.enforcement@dot.gov) or by phone at (804) 556-4678.

Sincerely,



Alan K. Mayberry  
Acting Associate Administrator for Pipeline Safety

Enclosure

cc: The Honorable John Hickenlooper, Office of the Governor, State of Colorado  
Mr. Joseph Molloy, Chief, Gas Pipeline Safety, Colorado Public Utilities Commission  
Mr. J.D. Maniscalco, Executive Director, Colorado 811