



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

MAY 07 2018

OVERNIGHT EXPRESS MAIL

Mr. John B. Rhodes
Chairman
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Dear Chairman Rhodes:

On December 4, 2017, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an adequacy evaluation of New York's enforcement of its excavation damage prevention law, commonly known as the State One-Call law. This letter serves as your official notice of our findings and determination. PHMSA has determined that the enforcement of New York's excavation damage prevention law is **ADEQUATE**. No further action is required at this time. PHMSA will schedule a follow-up evaluation next year to determine if New York is continuing to adequately enforce the excavation damage prevention law.

PHMSA conducted the 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. PHMSA spoke with Kevin Speicher and other New York State Department of Public Service staff, and asked a series of standard questions regarding actions New York took to enforce the State's excavation damage prevention law.

In accordance with 49 CFR 198.55, every State must be able to demonstrate annually that it adequately meets the seven Federal criteria used to assess the effectiveness of a State's damage prevention enforcement program. These criteria determine whether the State's pertinent operating/enforcement agency has the authority (i.e., is properly enabled) to enforce the State's excavation damage prevention law, whether the State utilizes its authority to issue civil penalties and other appropriate sanctions for violations of the law, and whether the State is able to provide documented procedures, processes, and data to demonstrate an effective overall damage prevention enforcement program. The evaluation criteria are enclosed.

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 or working in proximity to the excavation site, and the environment.

Mr. John B. Rhodes

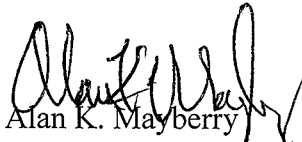
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PHMSA strongly believes that effective damage prevention programs, including enforcement, are best addressed at the State level. Nationwide statistics show that effective enforcement of State excavation damage prevention laws reduces excavation damage and pipeline incidents resulting in increased safety. PHMSA applauds the State of New York's success in developing and sustaining an effective damage prevention enforcement program.

If you have any questions or need additional information, please contact our Damage Prevention Team by email at excavation.enforcement@dot.gov, or by telephone at (208) 262-8867.

Finally, PHMSA encourages you and your colleagues to support several safety education initiatives throughout the year. These efforts include National Safe Digging Month in April, National Safety Month in June, and National 811 Day in August. More information is available at www.call811.com and www.nsc.org/work-safety/get-involved/national-safety-month.

Sincerely,



Alan K. Mayberry
Associate Administrator for Pipeline Safety

Enclosure

cc: Kevin Speicher, Chief, Safety Section, NYS Department of Public Service

United States Department of Transportation (USDOT)
Pipeline and Hazardous Materials Safety Administration (PHMSA)
Pipeline Safety: Pipeline Damage Prevention Programs
49 CFR 196 – Protection of Underground Pipelines from Excavation Activity
49 CFR 198 – Regulations for Grants to Aid State Pipeline Safety Programs
Effective January 1, 2016

BACKGROUND

49 USC § 60114 provides the United States Department of Transportation with back stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines in a state that has failed to adequately enforce its excavation damage prevention or one-call laws. **Federal civil penalty levels are as high as \$209,002 for each day the violation continues, with a maximum penalty of \$2,090,022 for a related series of violations.**

On July 23, 2015, PHMSA published a Final Rule that established:

1. Criteria and procedures for determining the adequacy of state pipeline excavation damage prevention law enforcement programs,
2. An administrative process for making adequacy determinations,
3. Federal requirements PHMSA will enforce in states with inadequate excavation damage prevention law enforcement programs, and
4. The adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised.

CRITERIA TO BE USED TO EVALUATE STATE DAMAGE PREVENTION PROGRAMS

1. Does the state have enforcement authority, including civil penalties?
2. Is there a designated enforcement body?
3. Is the state using its authority and making enforcement records available to the public?
4. Does the state have a reliable means of learning about damages?
5. Does the state have damage investigation practices that are adequate to determine the at-fault party when damage occurs?
6. At a minimum, does state law require that:
 - a. Excavators must call 811 before digging
 - b. Excavators must “respect the marks”
 - c. If damage to a pipeline occurs:
 - i. Excavator must report damage to operator at earliest practical moment.
 - ii. If release occurs, excavator must call 911.
7. Are exemptions from the damage prevention law limited? Written justification of exemptions is required.

ADMINISTRATIVE PROCESS FOR STATES TO CONTEST NOTICES OF INADEQUACY

1. PHMSA will issue a notice of inadequacy to the state in accordance with 49 CFR 190.5.
2. States have 30 days to submit written response by mail to:
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Associate Administrator for Pipeline Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE, Suite E22-321
Washington, DC 20590
3. PHMSA will issue a final decision to states that contested a notice of inadequacy.
4. State may petition PHMSA to reconsider at any time following a finding of inadequacy; PHMSA will respond not later than the date of the next annual review.
5. States that fail to establish an adequate enforcement program within five years of effective date of the damage prevention final rule (January 1, 2016) may be subject to a 4 percent reduction in base grant funding.

FEDERAL STANDARDS FOR EXCAVATORS

1. Call 811 before excavating.
2. Wait for pipeline operators to establish and mark the location of underground pipelines before excavating.
3. Excavate with proper regard for the marks and take all practicable steps to prevent excavation damage.
4. Make additional use of one-call as necessary.
5. Any contact with pipelines must be reported to operator at the earliest practical moment.
6. If there is a release, the excavator must call 911.

There are no exemptions in the damage prevention regulation for calling 811 prior to excavation. PHMSA understands many states have one-call law exemptions and will be considerate of those exemptions when undertaking Federal enforcement action.

FOR MORE INFORMATION

www.phmsa.dot.gov/pipeline/excavator-final-rule/about-excavation-enforcement-final-rule

CONTACT OUR DAMAGE PREVENTION TEAM

Our team of damage prevention professionals, Sam Hall, Annmarie Robertson, Steve Fischer, and David Appelbaum are available to answer questions pertaining to this final rule, state one call laws, and damage prevention. They may be reached at excavation.enforcement@dot.gov.