

Date: September 14, 1988

Subject: ACTION: Request for Clarification of Section 192.614(b)(4)

From: Richard L. Beam
Associate Director for Pipeline Safety Regulation, DMT-30

To: Robert L. Paullin
Associate Director for Operations & Enforcement, DMT-10

This responds to your memorandum of July 1, the letter dated June 17, 1983, from Mr. Michael J. Kidd to Mr. Edward Ondak, and the telephone conversation between Mr. Kidd, Mr. James Thomas, and me concerning the damage prevention rule.

The regulation in §192.614(b)(4) states in performance language that the damage prevention program of the operator must:

"(4) Provide for actual notification of persons who give notice of their intent to excavate of whether there are buried pipelines in the area of excavation activity and, if so, the type of temporary marking to be provided and how to identify to markings."

This regulation was based on to successful experience of a large number of one-call systems who utilized grid maps of appropriate scale to identify the particular operators who had underground lines in the general area of a planned excavation. The performance of many one-call systems over several years, the thinking and recommendations of the National Transportation Safety Board, and comment to the NPRM convinced us that it was essential that the calling excavator receive back definite word that there is or is not an underground gas pipeline in the excavation area so that he is not "flying blind."

MTB covered this is the preamble to the Final rule stating:

"However, since comments on this section opposed basically the time at which information is given to excavators and not the giving of information, MTB still believes that persons planning to engage in excavation activities should be told before such activities begin whether there are pipelines in the area and if so, the type of temporary marking that is to be provided and when the marking will be completed. Giving out this information early in the process should deter excavators from forging ahead with the work

should they feel a 'one-call' system has not been responsive to their calls. Therefore, MTB has incorporated in the new §192.614(b)(4) these notification provisions of paragraph (b)(4) of the NPRM, but revised them to permit the information to be given at some time after notice of excavation is received."

and further in the preamble:

". . . a main purpose of the damage prevention program is to facilitate preconstruction cooperation and planning between the operator and excavators. MTB believes that a well planned and operated damage prevention program will facilitate preconstruction communication between parties, thereby reducing the chance the excavation activities will commence before the pipelines in the area of the proposed activities are properly located and marked or that marking of pipelines would be too far in advance of excavation."

It appears that from the large numbers of planned excavation calls being received by operators in the Miss Dig system mentioned in the Michigan correspondence that there is a need for reducing the geographic area covered in each identification grid. Such reduction of grid sizes should provide a better definition of operators' affected and fewer notification calls required by the gas system operators to advise an excavator when the particular operator has no lines at the excavation site. An operator subject to Part 192 should work with other participants in his one-call system to make it more efficient for all by designing a more appropriate scaled geographic grid. One-call systems could also facilitate compliance by advising the calling excavator what operators are being notified or possibly in some areas actually make the negative responses to the calling excavator.

MTB recognizes the leading role that the State of Michigan has taken with its statute and the cooperative Miss Dig system, which was one of the first and most active one-call systems in the country. However, the point in the Kidd letter that if one operator calls an excavator telling him that this gas operator has no lines at the site should not give an excavator the impression that other gas operators do not have lines there. Such situations are exactly the reason why all gas operators must respond to the excavator so he is not given that mistaken impression by "silence." The excavator should know which operators have been notified by the one-call system and who has responded to him one way or the other.

OPSR believes the rule meets the intent of Congress and the recommendations of NTSB developed over several years of investigations. We do not believe the "actual notification" requirement of §192.614(b)(4) should be removed "when no facilities are present" as Michael Kidd suggests. Nor, do we believe that a State should be able to continue with a program which does not require the notification in §192.614(b)(4) because such omission would adversely conflict with essential criterion in §192.614.

We believe the State agency or OOE region personnel are in the best position to make reasonable compliance judgments in those unusual circumstances involving enforcement actions against operators who do not make all notifications to excavators where a very large number of calls are involved.

If OPSR can be of assistance in developing guidelines for enforcement within the performance standard stated in §192.614, we are ready to respond.