



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. Brad Johnson, Chairman  
Montana Public Service Commission  
1701 Prospect Avenue  
Helena, MT 59620-2601

Dear Chairman Johnson:

On February 11, 2016, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an adequacy evaluation of West Virginia's enforcement of its excavation damage prevention law, Montana Title 69, Public Utilities and Carriers, Chapter 4, Utility Lines and Facilities, Part 5, Excavations Near Underground Facilities. This letter serves as your official notice of our findings and determination. Based on the evaluation, PHMSA has determined that enforcement of Montana's excavation damage prevention law is **INADEQUATE** due to the State responding "no" to the following evaluation criteria:

- 1) Does the State have the authority to enforce its State excavation damage prevention law using civil penalties and other appropriate sanctions for violations?
- 2) Has the State designated a State agency or other body as the authority responsible for enforcement of the State excavation damage prevention law?
- 3) 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. Joel Tierney, Mr. John Torske and Mr. Will Rosquist of the Montana Public Service Commission; Ms. Sonja Nowakowski of the Montana Legislative Service; Mr. Clint Kalfell of Montana 811; and, a large number of Montana damage prevention stakeholders. During the evaluation, PHMSA asked a series of standard questions regarding actions that the State executed in calendar year 2015 to enforce the Montana 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, as well as data collection and analysis to evaluate the impact of the enforcement program. PHMSA encourages Montana stakeholders to address 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 Montana one-call law does not require notification to pipeline operators if a pipeline facility is damaged during excavation. Additionally the law does not include a requirement to notify 911 or a similar emergency response number if a pipeline facility is damaged and a release occurs. These are requirements of 49 USC § 60114 and are 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 Montana.

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 Montana Public Service Commission.

Montana 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, PHMSA evaluation of State damage prevention law enforcement will occur annually; however, if Montana takes action to establish an adequate enforcement program prior to the annual evaluation, Montana 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 understands that Montana damage prevention stakeholders have been working for the past several years to address this gap in the state damage prevention law. We encourage Montana damage prevention stakeholders to continue to work with policy makers to pass legislation that addresses the inadequacies in the State's excavation damage prevention program. We stand ready to assist Montana stakeholders in improving enforcement of its 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 R. Mayberry  
Acting Associate Administrator for Pipeline Safety

Enclosure

cc: The Honorable Steve Bullock, Office of the Governor, State of Montana  
Mr. G. Joel Tierney, Pipeline Safety Program Manager, Public Service Commission of Montana  
Mr. Clint Kalfell, Montana 811  
Mr. Kelly Johns, Montana One Call Center