

Pipeline and Hazardous Material Safety Administration (PHMSA) Considerations for Determining the Adequacy of State Damage Prevention Enforcement Programs

The Secretary (*of Transportation*) may not conduct an enforcement proceeding under subsection (d) for a violation within the boundaries of a State that has the authority to impose penalties described in section 60134(b)(7) against persons who violate that State's damage prevention laws, **unless the Secretary has determined that the State's enforcement is inadequate to protect safety, consistent with this chapter (Title 49 of the US Code), and until the Secretary issues, through a rulemaking proceeding, the procedures for determining inadequate State enforcement of penalties.**

A threshold criterion for determining the adequacy of a state's damage prevention enforcement program will be whether the state has established and exercised its authority to assess civil penalties for violations of its one-call laws. PHMSA will likely consider the following issues in further evaluating the enforcement component of state damage prevention programs:

- Current federal pipeline safety regulations, 49 CFR 192.614 and 49 CFR 195.442, require that gas and hazardous liquid pipeline operators, respectively, comply with certain damage prevention requirements through participation in a qualified one-call system. Specifically, this involves the receipt and recordation of notifications from excavators of planned excavation activities and performing their locating and marking responsibilities. Does state law contain similar requirements for operators to be members of and participate in the state's one-call system?

South Carolina - NO

- Does state law require all excavators to use the state's one-call system and request that underground utilities in the area of the planned excavation be located and marked prior to digging?

South Carolina –NO

- Has the state avoided giving exemptions to its one-call damage prevention laws to state agencies, municipalities, agricultural entities, railroads, and other groups of excavators?

South Carolina - NO

- Are the state's requirements detailed and specific enough to allow excavators to understand their responsibilities before and during excavating in the vicinity of a pipeline?

South Carolina - NO

- Are excavators required to report all pipeline damage incidents to the affected pipeline operators?

South Carolina - YES

- Does state law contain a provision requiring that 911 be called if a pipeline damage incident causes a release of hazardous products?

South Carolina - NO

- Has the responsible state agency established a reliable mechanism to ensure that it receives reports of pipeline damage incidents on a timely basis? Damage reports should include documentation of the consequences of any product release, including the extent of service interruptions, product loss, property damage, evacuations, injuries, fatalities, and environmental damage, and copies of the reports should be made available to the appropriate PHMSA Regional Office.

South Carolina - NO

- Does the responsible state agency conduct investigations of all excavation damage to pipeline incidents to determine whether the excavator appropriately used the one-call system to request a facility locate, whether a dig ticket was generated, how quickly the pipeline operator responded, whether the pipeline operator followed all of its applicable written procedures, whether the excavator waited the appropriate time for the facilities to be located and marked, whether the pipeline operator's markings were accurate, and whether the digging was conducted in a responsible manner?

South Carolina - NO

- Does the state's damage prevention law provide enforcement authority including the use of civil penalties, and are the maximum penalties similar to the federal maximums (see 49 U.S.C. 60122(a)).

South Carolina - NO

- Has the state designated a state agency with responsibility for administering the damage prevention laws?

South Carolina - NO

- Does the state official responsible for determining whether or not to proceed with enforcement action document the reasons for the decision in a transparent and accountable manner?

South Carolina – NO

- Are the records of these investigations and enforcement decisions made available to PHMSA?

South Carolina - NO

- With respect to cases where enforcement action is taken, is the state actually exercising its civil penalty authority?

South Carolina - NO

- Does the amount of the civil penalties assessed reflect the seriousness of the incident?

South Carolina - NO

- Are remedial orders given to the violator legally enforceable?

South Carolina - NO

- Are annual statistics on the number of excavation damage incidents, investigations, enforcement actions, penalties proposed, and penalties collected by the state made available to PHMSA and the public?

South Carolina - NO

Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006

Sec. 60134. State damage prevention programs

Damage Prevention Program Elements- An effective damage prevention program includes the following elements:

- (1) Participation by operators, excavators, and other stakeholders in the development and implementation of methods for establishing and maintaining effective communications between stakeholders from receipt of an excavation notification until successful completion of the excavation, as appropriate.

South Carolina - NO

`(2) A process for fostering and ensuring the support and partnership of stakeholders, including excavators, operators, locators, designers, and local government in all phases of the program.

South Carolina - NO

`(3) A process for reviewing the adequacy of a pipeline operator's internal performance measures regarding persons performing locating services and quality assurance programs.

South Carolina – Pipelines YES, all other own/operators, i.e. electric, telecommunication, etc. NO

`(4) Participation by operators, excavators, and other stakeholders in the development and implementation of effective employee training programs to ensure that operators, the one-call center, the enforcing agency, and the excavators have partnered to design and implement training for the employees of operators, excavators, and locators.

South Carolina - NO

`(5) A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities.

South Carolina - NO

`(6) A process for resolving disputes that defines the State authority's role as a partner and facilitator to resolve issues.

South Carolina - NO

`(7) Enforcement of State damage prevention laws and regulations for all aspects of the damage prevention process, including public education, and the use of civil penalties for violations assessable by the appropriate State authority.

South Carolina - NO

`(8) A process for fostering and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications, underground pipeline locating capability, and gathering and analyzing information about the accuracy and effectiveness of locating programs.

South Carolina - NO

`(9) A process for review and analysis of the effectiveness of each program element, including a means for implementing improvements identified by such program reviews.

South Carolina - NO