



**U.S. Department
of Transportation**

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Avenue, SE
Washington, DC 20590

December 20, 2016

Dear Excavator:

The U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), is writing to notify you that anyone conducting a digging project in the state of Montana who fails to comply with the one-call requirements and damages a natural gas or hazardous liquid pipeline, may be subject to federal enforcement action. Currently, the state of Montana does not adequately enforce its own one-call law; therefore, PHMSA may enforce Chapter 49, Code of Federal Regulations (CFR), Part 196 in Montana. The federal regulation prescribes the minimum requirements that excavators must follow to protect underground pipelines from excavation-related damage and requires excavators to do the following:

- Prior to and during excavation activity, the excavator must:
 - a) Use an available one-call system before excavating to notify operators of underground pipeline facilities of the timing and location of the intended excavation;
 - b) If underground pipelines exist in the area, wait for the pipeline operator to arrive at the excavation site and establish and mark the location of its underground pipeline facilities before excavating;
 - c) Excavate with proper regard for the marked location of pipelines an operator has established by taking all practicable steps to prevent excavation damage to the pipeline; and,
 - d) Make additional use of the one-call system as necessary to obtain locating and marking before excavating to ensure that underground pipelines are not damaged by excavation.
- If a pipeline is damaged in any way by excavation activity, the excavator must promptly report such damage to the pipeline operator, whether or not a leak occurs, at the earliest practicable moment following discovery of the damage.
- If damage to a pipeline from excavation activity causes the release of any PHMSA regulated natural and other gas or hazardous liquid from the pipeline, as defined in Chapter 49, CFR, Parts 192, 193, or 195, the excavator must promptly report the release to appropriate emergency response authorities by calling the 911 emergency telephone number.

Excavators who fail to comply with these requirements may be subject to civil penalties not to exceed \$205,638 for each violation for each day the violation continues, except that the

maximum administrative civil penalty may not exceed \$2,056,380 for any related series of violations (49 CFR 190.223). Additionally, PHMSA may enforce existing requirements applicable to pipeline operators, including those specified in 49 CFR 192.614, 49 CFR 195.442 and 49 U.S.C. 60114, if a pipeline operator fails to properly respond to a locate request or fails to accurately locate and mark its pipeline.

This program was developed to address one of the leading causes of pipeline accidents that hurt or kill people – damage to the pipeline occurring during a digging project. In the 2006 Pipeline Inspection, Protection, Enforcement and Safety Act (Public Law 109–468, December 29, 2006), Congress directed PHMSA to take enforcement actions (including civil penalties) against excavators who fail to comply with one call requirements and damage a natural gas or hazardous liquid pipeline. However, **federal enforcement is only applicable in states where enforcement of the state one-call law is inadequate**. Under this program, PHMSA annually evaluates the state enforcement program. PHMSA conducted its evaluation of the Montana enforcement program in 2016 and determined that the Montana enforcement program is inadequate. Therefore, PHMSA may now conduct federal enforcement when excavators fail to comply with 49 CFR 196.

In implementing this program, it is PHMSA's intent to encourage adequate state enforcement of the one-call law. In states with fully developed enforcement programs that include civil penalties, there is improved safety and a reduction in damage rates. PHMSA continues to work with stakeholders to improve damage prevention, especially in states where enforcement is inadequate, by providing grant funding, educating policy-makers in support of strong damage prevention laws and programs, participating in informational meetings, and other outreach efforts. We encourage you to support Montana's efforts to develop an adequate enforcement program in Montana. More information about this program can be found on our website at <http://phmsa.dot.gov/pipeline/safety-awareness-and-outreach/excavator-enforcement#>. If you have any questions, please contact PHMSA's Damage Prevention Team by email at excavation.enforcement@dot.gov or by phone at (804) 556-4678.

Sincerely,



Dr. Christie D. Murray
Acting Deputy Associate Administrator for Policy
and Programs