AGC THE CONSTRUCTION ASSOCIATION

AGC Webinar

Two-Part Webinar Series: Call Before You Dig

May 14, 2024

Webinar Two: Legal Liabilities for Utility Excavation Damages

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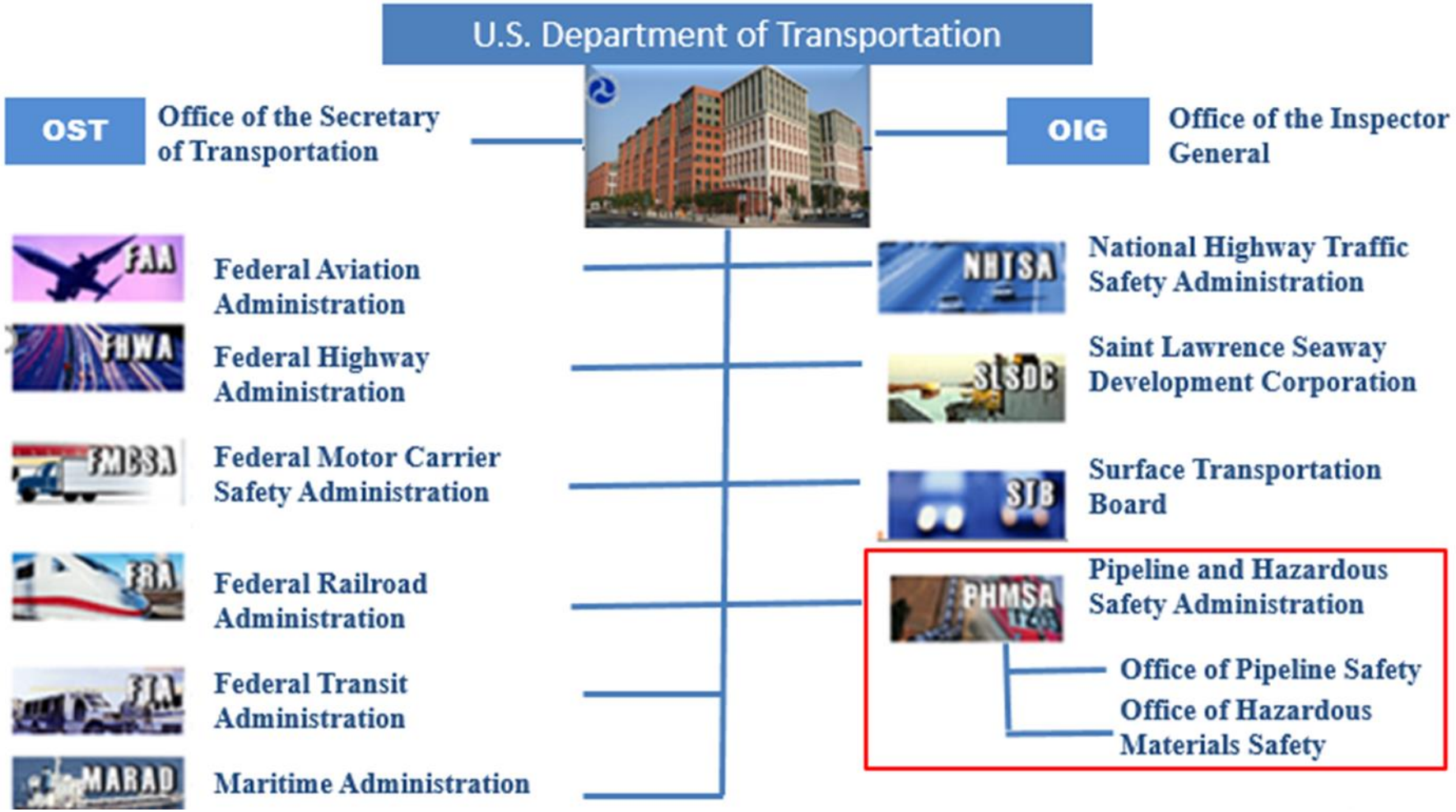
PHMSA?



Program offices

PHMSA performs its mission through two primary safety programs:

Office of Pipeline Safety (OPS)

- Pipelines transport and supply more than two thirds of the fuel used to heat, cool, and operate American homes, cars, and businesses. It maintains oversight over 3.3 million miles of regulated pipelines.

Office of Hazardous Materials Safety (OHMS)

- OHMS oversees the safe and secure shipment of close to one million daily movements of hazardous materials carried by highway, rail, vessel, and air.
- These materials are essential to the American economy for use in farming, medical applications, manufacturing, mining, and other industrial processes.

PHMSA Regulated Pipeline Facilities OPS and States

Pipeline Facilities by Regulation and System Types – CY 2023 Annual Reports				
Safety and Reporting Regulated		**Miles**	**% Miles**	**# Operators**
Hazardous Liquid/CO_2[1]		229,443	8%	566
Gas Transmission		300,084	10%	1,022
Gas Gathering		110,770	4%	490
Gas Distribution		2,312,189	78%	1,246
	subTotal	2,952,486		
Reporting-Regulated-Only		**Miles**	**% Miles**	**# Operators**
Hazardous Liquid[1]		37,363	13%	127
Gas Gathering		248,216	87%	509
	subTotal	284,893		
	Total	3,238,065		

Hazardous Liquid Breakout Tanks[1]	8,541 Tanks, 246 Operators
Liquefied Natural Gas	172 Plants, 258 Tanks, 93 Operators
Underground Natural Gas Storage	398 Facilities, 16,362 Wells, 128 Operators

[1] CY 2022 data. Hazardous Liquid/CO2 annual reports are due on June 15, 2024.

Gas Transmission/Hazardous Liquids Pipeline Information

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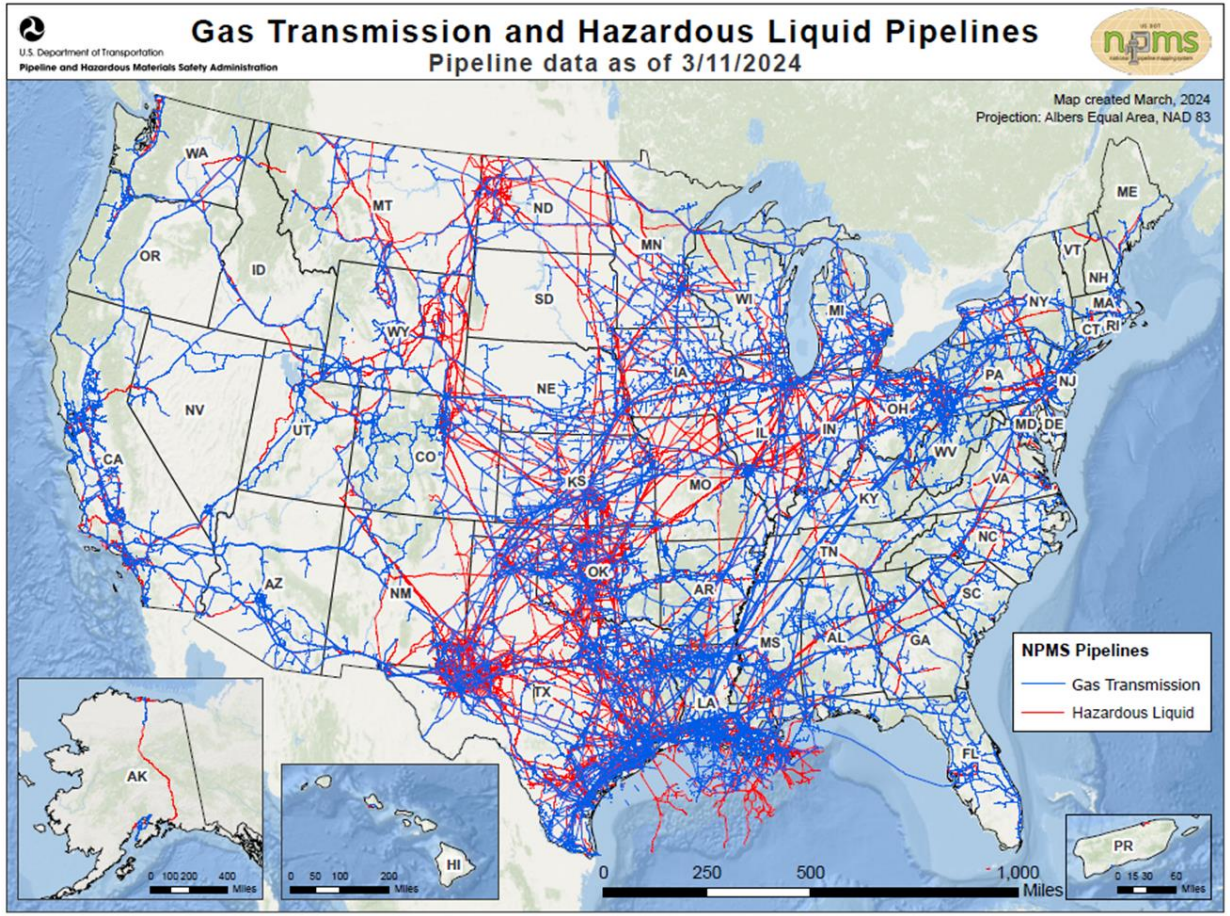

Gas Distribution Significant Incidents 2023

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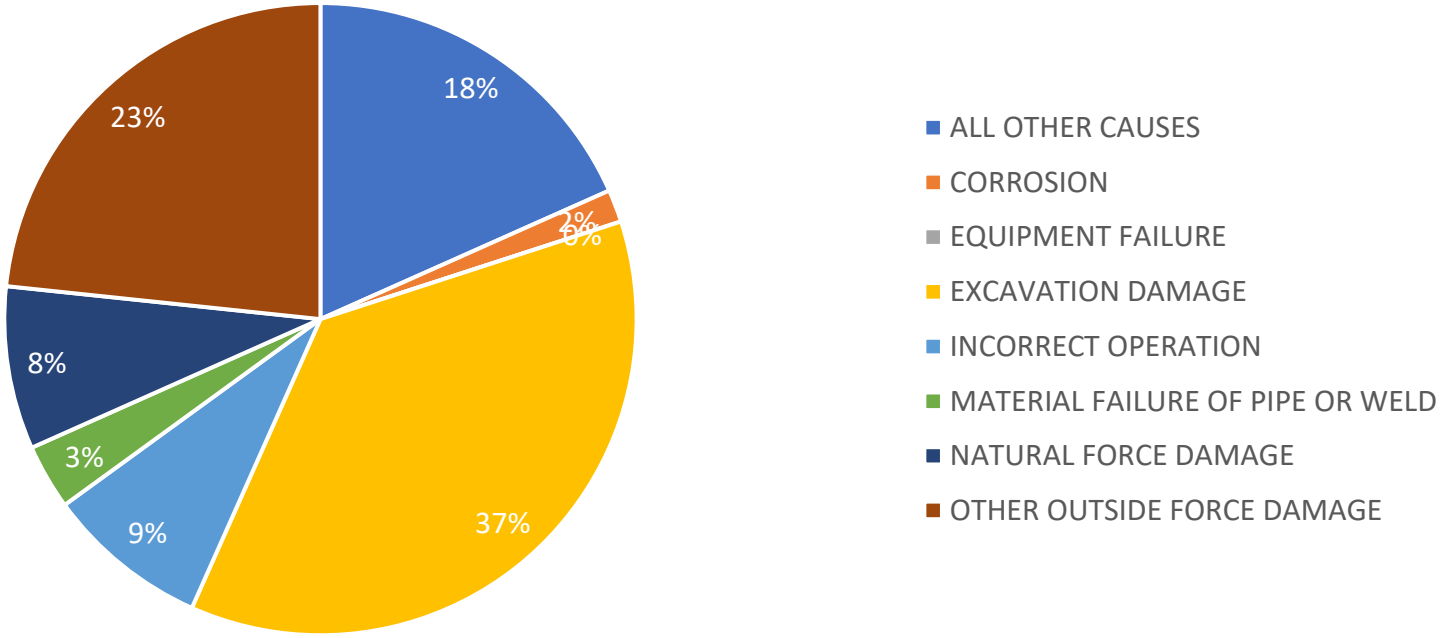
Leading Causes:

- Excavation Damage – Third Party
- Other Outside Force Damage – Vehicular Damage
- Incorrect Operation

Data as-of 3-22-2024

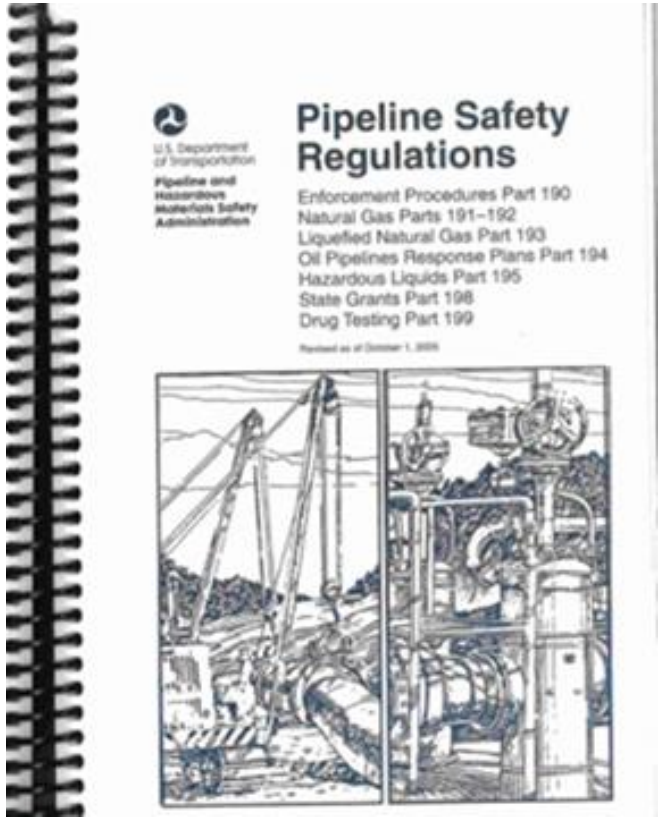


Federal Damage Prevention

The Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006 gave PHMSA enforcement authority over excavators who damage pipelines in States with inadequate excavation damage prevention law enforcement programs.

Current States with inadequate programs include:

- Alaska
- Florida
- South Dakota
- Utah



How are States Evaluated?

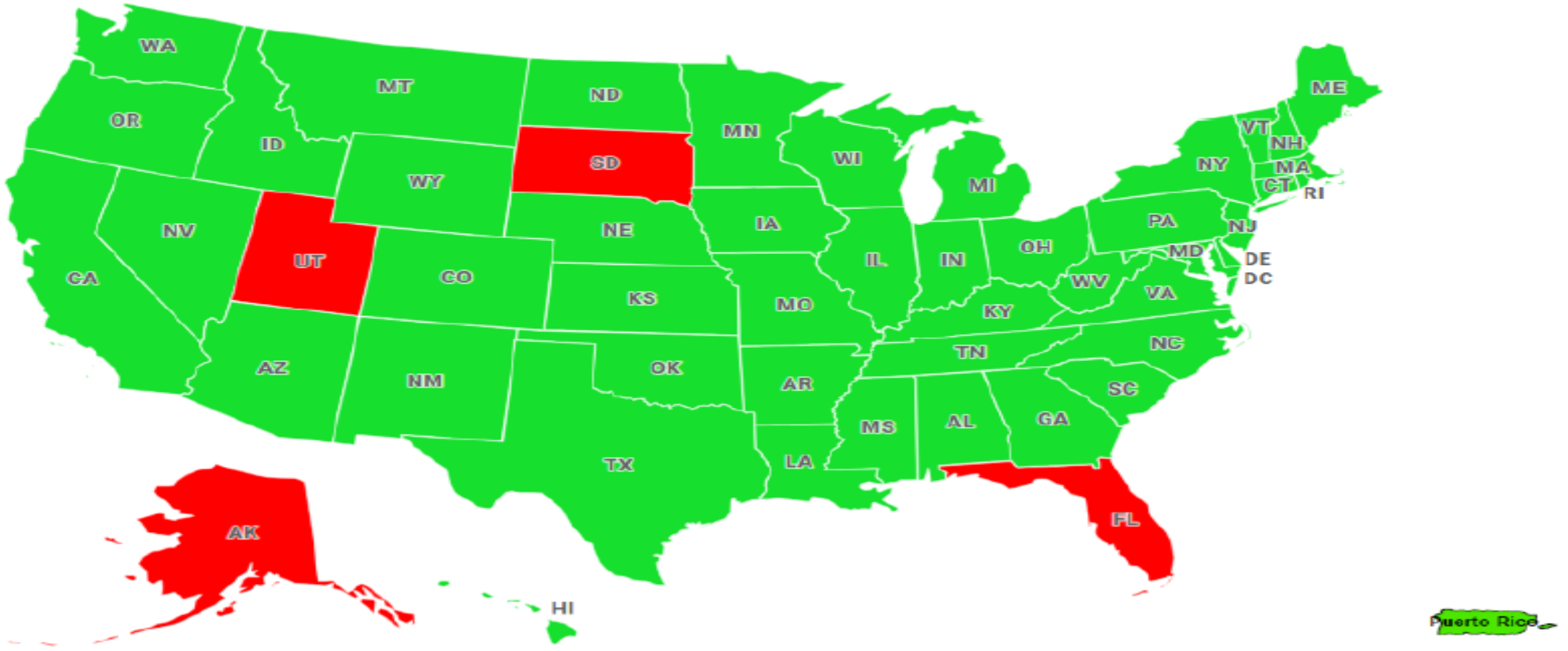
49 U.S. Code § 60134(b) Established the Nine Elements for an Effective Damage Prevention Program

Processes for:

1. Enhanced communication between operators and excavators
2. Fostering support and partnership of all stakeholders
3. Operator's use of performance measures for locators
4. Partnership in employee training
5. Partnership in public education
6. Enforcement agencies' role to help resolve issues
7. Fair and consistent enforcement of the law
8. Use of technology to improve the locating process
9. Data Data analysis to continually improve program effectiveness

Determinations of Adequacy of One-Call Law Enforcement Programs from 2023 Audits

As of January 18, 2024



Map produced January 18, 2024 by the U.S. Department of Transportation (U.S. DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA). Map provided as a reference only. PHMSA makes no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability with respect to this map for any purpose. PHMSA expressly disclaims liability for errors and omissions in the contents of this map.

Federal Regulations
Part 196: Protection of Pipelines From Excavation

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- Failure to use one-call system before excavating.
- Failure to wait for pipeline operator to mark the location.
- Failure to excavate with proper care.
- Failure to make additional use of one-call as necessary.
- Failure to promptly report any damage to operator.
- Failure to promptly report any release of gas or hazardous liquid by calling the 911.

Note: Pipeline operators and their contractors are subject to the excavation damage prevention requirements of 49 CFR Parts 192 and 195

Federal Penalties for Violators

- Civil Penalties
  - Up to $266,015* for each violation
  - Separate violation occurs for each day the violation continues (maximum for series of violations: $2,660,135*)
- Criminal Penalties
  - Fine, imprisonment for not more than 5 years, or both, for each offense
    - 88 FR 89560, December 28, 2023, Final Rule for 2024 inflation adjustment; Federal agencies are required to adjust their civil monetary penalties each year to account for changes in inflation in accordance with Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L.114-72).

State Damage Prevention Law Summary

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https://primis.phmsa.dot.gov/comm/DamagePreventionSummary.htm.

STATE	Excavator Notice: Minimum # Working Days Before Digging	Excavator Notice (Specific Language) Definition	Ticket Life (# of days) Definition	White-Line Required (Yes / No) Definition	Tolerance Zone Definition
Iowa	2	Iowa Code § 480.1A This chapter applies to any excavation unless otherwise provided by law. A person shall not engage in any excavation unless the requirements of this chapter have been satisfied. Iowa Code § 480.4.1.a. Except as otherwise provided in this section, prior to any excavation, an excavator shall contact the notification center and provide notice of the planned excavation. This notice must be given at least forty-eight hours prior to the commencement of the excavation, excluding Saturdays, Sundays, and legal holidays.	20 days. (Iowa Code § 480.4.1.a.)	Yes (Iowa Code § 480.4.1.e.)	18" (Iowa Code § 480.4.3.c.)

Excavation Damage Example

- On November 8, 2023, a farmer damaged a 12-inch gas transmission pipeline lateral resulting in a rupture in NW Washington state.
- As a result of the damage, Avista Corporation lost a total of 37,700 customers in Washington and Idaho.
- Outages included the college towns of Pullman, WA and Moscow, ID.
- Avista began shutting off meters and invoked mutual aid agreements with eight gas companies and municipalities. (AGA Assistance)
- A total of 1,800 space heaters were being provided to those in need.
- The pipeline was repaired on November 9, 2023.
- Relights begun on November 10, 2023, and were 95% complete by November 14, 2023.
- The farmer did not have a one-call ticket.

Public Resources

PHMSA Homepage
www.phmsa.dot.gov

Federal Regulations
www.ecfr.gov

Grants
https://www.phmsa.dot.gov/about-phmsa/working-phmsa/grants

Pipeline Terminology and Basics
https://www.phmsa.dot.gov/safety-awareness/pipeline/safety-awareness-overview

Community Toolkit
http://primis.phmsa.dot.gov/comm/

PIPES 2020 Act Monthly Rulemaking Status Update
https://www.phmsa.dot.gov/legislative-mandates/pipes-act-web-chart

National Pipeline Mapping System
www.npms.phmsa.dot.gov

Questions?

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Liabilities for Contractors & Firms

As Contractors we can face significant legal liabilities if we commit damages during excavation work and fail to adhere to best safety practices.

The federal law that specifically addresses the requirement to call for the marking of underground utility lines before excavation. The Pipeline Safety Improvement Act of 2002. This law amended the Federal Pipeline Safety Laws (49 U.S.C. § 60101 et seq.) and includes provisions related to the prevention of damage to underground pipelines and other utilities during excavation activities.

Under this law, excavators are required to contact 811before beginning any excavation work. Contacting 811 connects excavators with their local One Call Center, which then notifies all affected utility companies in the area. The utility companies are then responsible for marking the location of their underground lines to prevent accidental damage during excavation.

Additionally, individual states may have their own laws and regulations related to excavation safety and the prevention of damage to underground utilities. These state laws often align with federal requirements but may impose additional requirements or penalties for non-compliance.

Overall, contacting 811 before digging is a critical step to ensure the safety of excavation work and to prevent damage to underground utility lines, in compliance with federal and state laws.

So what are some of the risks associated with damaging utilities and not following best practices while excavating.

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Federal Laws and Regulations:

1. **Property Damage:** If contractors damage public or private property during excavation, they may be liable for the cost of repairs or replacement. This could include damage to underground utilities, buildings, landscaping, or other structures.

2. **Personal Injury or Death:** If excavation work results in injury or death to workers or bystanders due to negligence or failure to follow safety protocols, contractors can face severe legal consequences. This may include compensation for medical expenses, lost wages, pain and suffering, and in extreme cases, punitive damages.

3. **Environmental Damage:** Excavation activities can also lead to environmental damage, such as soil erosion, contamination of water sources, or disruption of habitats. Contractors may be held responsible for cleanup costs and environmental remediation.

4. **Contractual Obligations:** Contractors may have contractual agreements with clients or government agencies that outline specific safety standards, project timelines, and liability clauses. Failure to meet these contractual obligations can result in legal disputes and financial penalties.

5. **Downtime/Loss of Revenue:** When contractors cause damage to a utility that forces them to shut down causing loss of revenue and possibly cutting into timely schedule loss.

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Penalties also vary at the state level, as many states have their own One Call laws and enforcement mechanisms.

State Laws and Regulations:

1. License Suspension or Revocation: Some states have the authority to suspend or revoke the excavation license or permit of individuals or companies that repeatedly violate One Call requirements. This can impact the excavator's ability to work legally in the state.

2. Injunctions and Compliance Orders: State regulatory agencies may issue injunctions or compliance orders requiring the excavator to take specific actions to rectify the damage, improve safety practices, or undergo additional training.

3. Public Notifications and Reporting Requirements: In certain cases, states may require excavators to publicly disclose the damage, notify affected parties, and report the incident to the appropriate regulatory authorities. This transparency helps ensure accountability and awareness of safety violations.

4. Criminal Penalties (in severe cases): In extreme situations involving gross negligence or intentional disregard for safety regulations, some states may pursue criminal charges against the excavator. Criminal penalties can include fines, probation, or even imprisonment in rare cases.

Overall, the penalties for not calling 811 and damaging a utility line can be significant, emphasizing the importance of compliance with excavation safety regulations to protect public safety and prevent costly accidents. To mitigate these legal liabilities, contractors should prioritize safety training, use proper excavation techniques and protective systems, obtain necessary permits and approvals, conduct thorough site inspections, and maintain clear communication with stakeholders throughout the project.

What are the best practices that need to be followed prior to an excavation starting.

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<u>This starts before you start digging on the project</u>

1. Contacted your local 811 One Call Center for a locate request per your States requirements. Wait the required wait time per State law.
2. Responded to any concerns from the locating companies or owner operators. Verify positive response system if required.
3. Conducted a site visit to verify all the utilities are located and look for any above ground evidence of any utilities that are not located. Keep a record of any that are not located and follow yours States requirements for a second notice.
4. Document the line locates. This is the most important step, take pictures and videos prior to excavation of the entire project and keep a records of these in-case of a line damage.

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Starting the Excavation

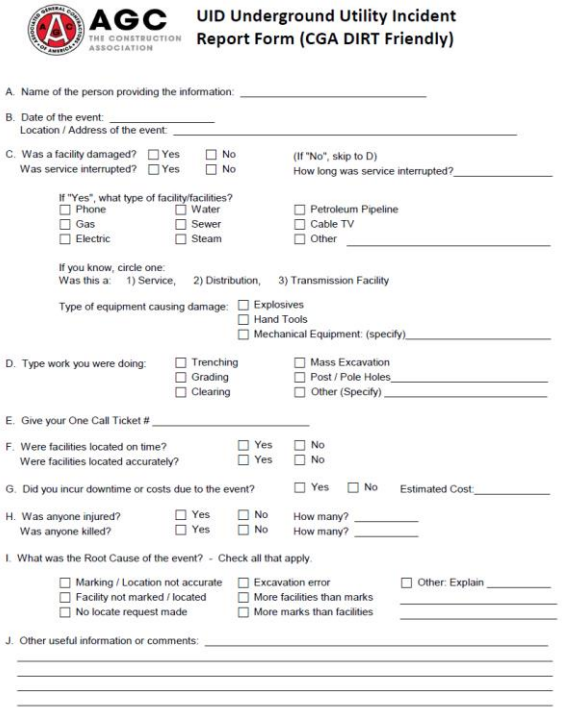
Starting the excavation:

1. Verify the location of all marked utilities marked within the tolerance zone of the excavation. Pothole to verify location, size and quantity.
2. Take pictures and/or video of the located utilities and the locations in proximity to reference points and other utilities.
3. Once all utilities have been verified for the location of the excavation you now start to safely begin to excavate.

I followed all the best practices and still damaged a utility, now what?

Documentation:

1. When the incident occurs: cease excavation, ensure that the job site and surrounding area of the incident are secure and safe.
2. If needed or required: Notify 911 and the local 811 Call Center of the damage. Notify the utility owner operator of the damage.
3. When safe, take pictures, videos and documentation of the damage, including the surroundings, utilizing damage “hit kits”. This doesn’t matter who is at fault. Other things to documents are the name, number of people, equipment, time of arrival and company info of representatives showing up to investigate the damage. Keep documentation of conversations. Start a job file to organize everything for future. Keep a company representative on site the entire time for the investigation and the repair.
4. Keep record indefinity or as long as needed until State statues expire.
5. In the event of a claim, review your company records, ask for a subrogation file from owner/operator and refer back to your local One Call 811 laws and regulations.
6. Be aware that some owner/operators will go directly to your insurance company to recover costs.
7. Complete a AGC - UID Underground Utility Incident Report Form (CGA DIRT Friendly) or equal form.



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UID Underground Utility Incident Report Form (CGA DIRT Friendly)

A. Name of the person providing the information: _____

B. Date of the event: _____
Location / Address of the event: _____

C. Was a facility damaged? ☐ Yes ☐ No (If "No", skip to D)
Was service interrupted? ☐ Yes ☐ No How long was service interrupted? _____

If "Yes", what type of facility/facilities?
☐ Phone ☐ Water ☐ Petroleum Pipeline
☐ Gas ☐ Sewer ☐ Cable TV
☐ Electric ☐ Steam ☐ Other _____

If you know, circle one:
Was this a: 1) Service, 2) Distribution, 3) Transmission Facility

Type of equipment causing damage: ☐ Explosives ☐ Hand Tools ☐ Mechanical Equipment: (specify) _____

D. Type work you were doing: ☐ Trenching ☐ Mass Excavation ☐ Grading ☐ Post / Pole Holes _____ ☐ Clearing ☐ Other (Specify) _____

E. Give your One Call Ticket # _____

F. Were facilities located on time? ☐ Yes ☐ No
Were facilities located accurately? ☐ Yes ☐ No

G. Did you incur downtime or costs due to the event? ☐ Yes ☐ No Estimated Cost: _____

H. Was anyone injured? ☐ Yes ☐ No How many? _____
Was anyone killed? ☐ Yes ☐ No How many? _____

I. What was the Root Cause of the event? - Check all that apply.

☐ Marking / Location not accurate ☐ Excavation error ☐ Other: Explain _____
☐ Facility not marked / located ☐ More facilities than marks
☐ No locate request made ☐ More marks than facilities

J. Other useful information or comments: _____

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Questions?