

INDUSTRY PERSPECTIVES ON STATE DAMAGE PREVENTION PROGRAMS

Excavation activity across the country is steadily rising due to recent increases in civic improvement projects, utility infrastructure renewal work, and federal projects funded by economic stimulus initiatives. The shale gas phenomenon has also played a significant role in certain parts of the country. This increase in excavation activity underscores the need for an effective process to prevent damages to underground facilities. Damage prevention requires that all stakeholders in the process understand and fulfill their responsibilities, and that enforcement of these responsibilities is provided by law and imposed as appropriate.

The Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006 authorized federal enforcement in states whose damage prevention laws are either inadequate or not sufficiently enforced. In response to that mandate, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) recently released a Notice of Proposed Rulemaking (NPRM) describing the circumstances and parameters of a federal enforcement role of state damage prevention law. As states evaluate and adjust their damage prevention laws and enforcement practices in response to this pending regulation, we encourage policymakers to avoid implementing or increasing stakeholder exemptions to the extent possible. Any exemptions should be narrowly defined and justified in writing, as prescribed in PHMSA's NPRM. State authorities should also ensure there is effective and balanced enforcement of state damage prevention law.

In 1999, the *Common Ground Study of One-Call Systems and Damage Prevention Best Practices* was developed by virtually all stakeholders in the damage prevention process, including underground facility operators, excavators, locators, one-call centers, and others. The study states that "the underlying premise for prevention damage for underground facilities, and the foundation for this Study, is that all underground facility owners/operators are members of one-call centers, and that it is always best to call before excavation."

The responsibilities are clear: excavators must call 811 before they dig, wait the required time before excavating, respect facility markings and dig with care. Equally important, all underground facility operators must belong to their respective one-call center and ensure that facilities are marked accurately and in a timely manner (according to state law). Any exemptions or failure to hold all parties accountable for their responsibilities in this process only compromises safety, and state law should address that.

Further, enforcement of damage prevention laws is critical to the process and a catalyst for federal action on this issue. The PIPES Act calls for states to promote fair and consistent enforcement of the law. This is only possible if there is a fair and consistent enforcement mechanism in place. While this may seem simplistic, many state laws lack an established entity to enforce damage prevention requirements or do not adequately enforce specific stakeholder responsibilities despite their inclusion in the statute. An effective enforcement mechanism should not be measured exclusively by the amount of fines issued or penalties levied. Other examples of enforcement actions could include mandatory training and warning letters issued.

We encourage states to evaluate their damage prevention laws and current enforcement practices, bearing in mind that damage prevention requires that all stakeholders meet their responsibilities. Exemptions from fundamental responsibilities have the potential to severely undermine the entire process. Further, legitimate enforcement of damage prevention responsibilities by *all* stakeholders is central to having an effective state damage prevention program. We are available to provide educational materials from model state programs and to answer questions about how a state program can be improved.

