

Energy and Telecommunications Interim Committee  
May 13, 2009  
"One Call" Update

Montana's One-Call Law. (MCA 69-4-501 et seq.)

- All excavators (commercial and residential) must call "one-call" (811) before excavation, and cannot excavate until underground facilities are marked.
- All underground facility owners must belong to one call system and respond to request to locate facilities within 48 hours.
- Excavators are liable for cost of repair to underground facilities damaged if excavator fails to call one-call.
- Additional damage fees imposed for repeated offenses, up to \$1,000 for third and subsequent violations.

Pipeline and Hazardous Materials Safety Administration (PHMSA) Advance Notice of Proposed Rulemaking (ANPRM): Fed Reg-10/29/09; p.55801 ff.

- PHMSA's "goal is to minimize the need to take federal enforcement action against excavators that damage pipelines by encouraging states to strengthen their damage prevention laws to include the authority to impose penalties against persons who violate those laws and to adequately enforce those laws through the use of civil penalties."
- "States with comprehensive damage prevention programs that include effective enforcement have substantially lower probability of excavation damage [and a] substantially lower risk of serious incidents..."
- All stakeholders must participate in PHMSA's damage prevention process, which includes 9 statutory elements (see "PIPES" Act):
  1. enhanced communication between excavators and operators;
  2. support and partnership of all stakeholders in all phases (enforcement, system improvement, etc.) of the program;
  3. use of performance measures for locating facilities;
  4. employee training;
  5. public education;
  6. enforcement agencies' role as partner and facilitator to help resolve issues
  7. fair and consistent enforcement;
  8. use of technology to improve all parts of the process; and
  9. analysis of data continually to evaluate/improve program effectiveness.
- **Montana statute does not pass PHMSA standards—yet.**

Stakeholders:

*Legislative drafting committee:*

- Michelle Slyder, CHS Inc., Montana Liquid and Gas Pipeline Association, Montana Utility Coordinating Council
- Dale Schultz, NorthWestern Energy, Montana Utility Coordinating Council
- Joel Tierney, Public Service Commission
- Cary Hegreberg, Montana Contractor's Association

- Bill Squires, Blackfoot Telecom
- Josh Hinrichs, ELM Locating
- Geoff Feiss, Montana Telecom Association

*Other Stakeholders/Participants:*

- NorthWestern Energy
- PHMSA
- Montana Utility Coordinating Council (UULC--represents one call for 54 counties)
- UDIG (represents one call for Lincoln and Flathead Counties)
- Dexter Busby & Maurine Krum, Montana Refining
- Energy West
- Havre Pipeline
- Triangle Telephone Cooperative
- City of Kalispell and Flathead Valley Utility Coordinating Council
- Williston Basin Pipeline
- 3 Rivers Communications
- CenturyLink
- IBEW
- Old Castle Materials

*Invited to contribute but unable to attend the first meeting:*

- MDT
- MACo
- Transcanada
- MDU
- Knife River
- Sime Construction
- City of Bozeman
- Bresnan Communications
- Montana Petroleum Association

***Any other interested parties are encouraged to participate***

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U.S. Department  
of Transportation  
**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Ave., S.E.  
Washington, DC 20590

**MAY 10 2010**

Mr. Greg Jergeson  
Chairman  
Montana Public Service Commission  
PO Box 202601  
Helena, MT 59620-2601

Dear Mr. Jergeson:

The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) applauds the damage prevention stakeholders who are working to improve and strengthen the State of Montana damage prevention program. It is our understanding that you intend to submit legislation to more closely align the law with the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006, Public Law 109-468, (PIPES Act), and the Common Ground Alliance Best Practices. PHMSA endorses your efforts to improve your law.

The nine elements of an effective damage prevention program outlined in the PIPES Act anticipate the participation of all stakeholders throughout the process. The fundamental principle of broad stakeholder involvement is found throughout those nine elements. Stakeholders should be actively engaged as well as accountable for their respective roles in improving safety and protecting people and the infrastructure. It is our understanding that stakeholders in Montana have been working together to draft legislation that is consistent with the nine elements, and we encourage continued cooperation and partnership.

Fair and balanced state damage prevention laws are critical in order for states and the Federal Government to protect our citizens and reduce damages to the pipeline infrastructure. As you know, PHMSA has many initiatives underway that are focused on improving damage prevention. Excavation damage is a national concern, but we believe that it is a matter best addressed at the state level. PHMSA will continue to dedicate significant resources in helping states improve their damage prevention laws and programs. We encourage your ongoing efforts to improve the Montana damage prevention program, and we look forward to working with you as you move through the legislative process. If you have any questions or are in need of additional assistance, please feel free to contact me.

Sincerely,

Jeffrey D. Wiese  
Associate Administrator for Pipeline Safety

Cc: Mr. G. Joel Tierney, Pipeline Safety Program Manager