

NCHRP 20-7
Proposed Research Needs Statement

Subcommittee on Right of Way, Utilities, and Outdoor Advertising Control
July 18, 2014

TITLE

Dig Law Revisions and an Assessment of Potential Impacts to State Transportation Departments

BACKGROUND / NEEDS STATEMENT

The Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006 impacts the work of each State Transportation Department (STD) as excavators and potentially as operators. States currently have damage prevention laws in place, which impacts the STD as well. The PIPES Act provides for enhanced safety and environmental protection in pipeline transportation, partially focused on damage prevention in developing effective state damage prevention programs. The PIPES Act also provides PHMSA with limited authority to conduct administrative civil enforcement proceedings against excavators who damage pipelines in states that fail to adequately enforce damage prevention law. The PIPES Act limits the Secretary of Transportation's ability to take civil enforcement action against these excavators, unless it is determined that the state's enforcement of its damage prevention laws is inadequate to protect safety.

In 2009, the Pipeline and Hazardous Materials Safety Administration (PHMSA) assessed each state on nine elements of effective damage prevention. The PIPES Act defines these nine elements of an effective damage prevention program as follows:

- Element 1 - Enhanced Communication between Operators and Excavators
- Element 2 – Fostering Support and Partnership of all Stakeholders
- Element 3 – Operator's Use of Performance Measures for Locators
- Element 4 – Partnership in Employee Training
- Element 5 – Partnership in Public Education
- Element 6 – Enforcement Agencies' Role to Help Resolve Issues
- Element 7 – Fair and Consistent Enforcement of the Law
- Element 8 – Use of Technology to Improve the Locating Process
- Element 9 – Data Analysis to Continually Improve Program Effectiveness

In 2010, PHMSA enlisted the help of the North American Telecommunications Damage Prevention Council (NTDPC) to survey and summarize state damage prevention law relative to specific characteristics. This research identified variances in state laws including: excavation notice requirements, damage reporting requirements, exemptions from the requirements of the laws for excavators and/or utility operators, provisions for enforcement of the laws, and many others.

<http://primis.phmsa.dot.gov/comm/DamagePreventionSummary.htm>

PHMSA issued a Notice of Proposed Rulemaking (NPRM) to revise the Pipeline Safety Regulations. In this NPRM, PHMSA proposed to amend the Federal Pipeline Safety Regulations to: (1) Establish criteria and procedures PHMSA will use to determine the adequacy of state pipeline excavation damage prevention law enforcement programs; (2) establish an administrative process for states to contest notices of inadequacy; (3) establish the Federal requirements PHMSA will enforce in states with inadequate excavation damage prevention law enforcement programs; and (4) establish the adjudication process for

administrative enforcement proceedings against excavators where Federal authority is exercised. Based upon current assessments, almost 10 states are at risk of losing pipeline safety funding due to lack of enforcement or inadequate enforcement.

<http://www.regulations.gov/#!documentDetail;D=PHMSA-2009-0192-0201>



One Call Update
Damage Prevention P

The NPRM poses the following evaluation criteria, the following excerpted may have impacts to STDs:

Has the state designated a state agency or other body as the authority responsible for enforcement of the state excavation damage prevention law?

Is the state assessing civil penalties for violations at levels sufficient to ensure compliance?

Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint-driven reporting, etc.) for learning about excavation damage to underground facilities?

Does the state employ excavation damage investigation practices that are adequate to determine the at-fault party when excavation damage to underground facilities occurs?

Does the state limit exemptions for excavators from its excavation damage prevention law?

RESEARCH OBJECTIVE

The purpose of this research is to identify impacts to STDs due to: changes in local, state and federal pipe and damage prevention regulation, impacts due to the NPRM evaluation criteria outlined, and general NPRM. The research may investigate STD related subjects such as: variances in damage prevention laws in the states, enforcement of state dig law, mandatory damage reporting, mandatory membership in One Calls, and removal of exemptions from state damage prevention laws. It is recommended that this research be based upon individual state assessment as seen in the 2010 summary, and a higher level, collective assessment.

WORK TASKS

Tasks anticipated in this project include the following:

- Study the PIPES Act from the perspective of a STD.
- Research individual state damage prevention laws and STD policies.
- Study the 2010 Summary to better define appropriate STD involvement.
- Study the NPRM from the perspective of a STD.
- Research should include analysis of: variances in state damage prevention law, enforcement, mandatory damage reporting, mandatory membership in One Calls, and removal of exemptions from state damage prevention laws.
- Identify impacts / recommendations to individual STDs and collective recommendations due to:
 - 1) Changes in local, state and federal pipe and damage prevention regulation,
 - 2) NPRM evaluation criteria outlined, and
 - 3) NPRM enforcement proposal.

- Identify issues that need further attention.
- Write and publish a summary of the study.

URGENCY

The NPRM has been in place for years and a decision on the proposal may be reached soon. Identification of impacts to STDs as excavators, and in cases operators, is highly valuable. The research will inform transportation departments of the impacts and risk potential, which may guide them to new actions.

FUNDING REQUESTED AND TIME REQUIRED

It is estimated that this research will take ____ months to complete and will require \$_____.

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