



9th Annual Report to the Governor and the General Assembly of Maryland



2020

MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY

2019 State Damage Prevention
Program Review

The Maryland Underground Facilities Damage Prevention Authority (the Authority)

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On the cover: 2019 natural gas explosion event August 25, 2019 in Columbia, Maryland....

The explosion, which occurred when natural gas migrated into the structure and was triggered by unknown means destroying a majority of the Lakeside office building. No one was injured in the blast; however, 22 businesses were displaced.



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**Know what's below.
Call  before you dig.**



**Maryland Underground Facilities
Damage Prevention Authority**

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January 2020

To: The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland; and

The Honorable Willian Ferguson
and The Honorable Adrienne A. Jones
Presiding Officers of the Maryland General Assembly; and

Members of the General Assembly of Maryland

Ladies and Gentlemen:

Pursuant to the Public Utilities Article of the Annotated Code of Maryland, § 12-144 - Annual Reports, I hereby, as the 2020 Chair of the Maryland Underground Facilities Damage Prevention Authority, submit this ninth Annual Report to you. This document serves as an outline of the Authority's activities and accomplishments for the 2019 calendar year.

Sincerely,



Erik L. Phillips
Chairman, MUFDPA



About the Maryland Authority

The Maryland Underground Facilities Damage Prevention Authority (“The Authority”) was created by the Maryland General Assembly in 2010 to enforce the Miss Utility Law (Annotated Code of MD, Public Utilities, Title 12). This legislation was required by actions taken by the federal government which ordered all states and U.S. territories to create a One-Call Compliance Program. The Authority seeks to protect all underground facilities of owners in the State of Maryland from destruction, damage or dislocation in order to prevent death or injury to individuals; property damage to private and public property; and the loss of services provided to the general public.

The Authority is a quasi-judicial agency of the Executive Branch of Maryland state government; whose nine (9) members are appointed by the Governor and sit as Administrative Law Judges when deliberating over violations of the Title XII statute. The Authority does not seek grants or aid from the State of Maryland. The Authority’s operational budget is supported by an annual federal grant; revenues from outgoing Miss Utility tickets as well as grants from local subscribers. All fines collected by the Authority are used solely for Education and Outreach purposes. Maryland counties and Municipalities are exempted from the ticket surcharge and any other charges associated with the issuance of a Miss Utility ticket under the current statute.

"The MARYLAND AUTHORITY MISSION STATEMENT"¹

The Authority seeks to protect underground facilities of owners in the State of Maryland from destruction, damage or dislocation to prevent:

- death or injury to individuals;
- property damage to private and public property; and
- the loss of services provided to the general public.

To accomplish this, the Authority seeks to promote, enhance, and assist the State of Maryland in enforcing the Maryland underground utility damage prevention law and furthering programs through efforts that include consistent enforcement, effective public education, and the constant knowledge that public safety through reduced damages is our prime concern.



¹ Pursuant to the legislative intent enacted by the Maryland General Assembly, as part of the State Underground Facilities law, Article Public Utilities, Title 12, Section 12-102, the mission statement adopted by the Authority in 2010.



Executive Summary

- The Authority met twelve (11) times during the 2019 calendar year and reviewed one hundred twenty-eight (128) probable violations during this period. Of those 128 violations, seventy-one (71) were carried over from 2018. Seventy-one (71) violations were reviewed and acted upon.
- The total fines assessed in 2019 were \$88,374.00. The Authority also recommended Title XII Damage Prevention Safety training to all companies in violation of the statute or required written policy statements in order to mitigate internal shortfalls to their damage prevention programs. The Authority intends to amend the current statute during the 2020 legislative session to make Damage Prevention Training mandatory (the Authority provides training via the MD/DC DPC at no charge to the violator). To-date, the Authority has collected \$58,000 and spent over \$45,000 on Education and Outreach Initiatives.
- There were thirteen (13) hearings set by the Authority in 2019. Of those hearings, nine (9) were heard, three (3) were settled prior to the hearing date and one (1) case was withdrawn by the violator.
- Despite an uptick nationwide in underground facility damages, Maryland remains one of the states with the lowest “hit rate.” – .54%; ² percent damages per 1000 Miss Utility tickets last reporting period (2018); which is a -3.5% decrease over the last reporting period in 2017. This success can be directly attributed to the aggressive education and outreach programs of the Authority and other stakeholders in the Damage Prevention community.

² 2018 Common Ground Alliance (CGA) Dirt Report – <https://greenanalytics.ca/DIRT-2018/>

- The Pipeline and Hazardous Material Safety Administration (PHMSA) which is a division of the United States Department of Transportation, once again evaluated the Authority for the 2018 State Damage Prevention Program for “Adequacy” in 2019. This review was the fourth annual evaluation for the Authority. Once again, the Authority received an “Adequate” rating (highest level) for its program, scoring 252 out of 258 points.
- The Authority received a \$97,000.00 State Based Program Federal Grant from the Pipeline & Hazardous Materials Safety Administration (PHMSA) in 2019. This is the eighth such award in the Authority’s nine (9) years of operation, making the total awards \$750,950.00. The PHMSA program is highly competitive, with all fifty (50) States and Puerto Rico competing for a portion of the \$1,500,000.00 set aside each year for State Damage Prevention Programs. The maximum award is \$100,000.00 per state. The average grant awarded to the Authority over the past eight (8) years is \$80,000. The Authority intends to apply again in 2020 for additional funds for our data tracking initiative.
- A major focus for 2019 and 2020 for the Authority is a complete overhaul of the Authority’s website which will have a Case Management System (CSM) tool built into it. This will allow for ease in reporting violations, information sharing and report generation. This extensive undertaking was made possible by the Authority’s success in obtaining grants from PHMSA for special projects.
- Since education and the enforcement are key elements of the Maryland state damage prevention program, an Underground Safety syllabus is being developed to explain the Title XII law and the best practices associated with achieving zero damages in Maryland. The Damage Prevention, which will include videos overviews, quizzes and a certificate of completion course will be available free of charge to any interested party on the Authority website in both English and Spanish. The estimated launch of the program will be the Fall of 2020.



- The Authority's emphasis continues to focus on enforcement as required by changes to the Federal Rules governing the State-based Compliance programs (Rule 9). As a result, a permanent funding source for the Authority's day-to-day operations was needed. The 2016 Maryland legislature approved the Authority's request (HB696/SB480) for this dedicated revenue stream and began receiving on average \$20,000.00 per month in revenues from the .05 cent surcharge on all out-going Miss Utility tickets in 2016. Thus, during the ten (10) month reporting period in 2019, the Authority received \$174,344.15 and is on pace to reach the \$200,000 goals for that period.
- Despite budget pressures, the Authority does not and has never sought grants or aid from the State of Maryland. All fines collected by the Authority are used solely for Education and Outreach purposes. Maryland counties and municipalities are exempted from the surcharge and any other charges associated with the issuance of a Miss Utility ticket under the current statute. They are, however, permitted by statute to charge \$35.00 for locating their underground utilities and \$15.00 for a one-time re-marking request.
- The Title XII law has been in effect for nearly ten (10) years, with very few changes over the ensuing years. In order to modernize the law and correct unexpected consequences or deficiencies in the statute, the Authority has filed SB 877 (Sen. Feldman, D- Montgomery County – Dist. 15) during the current legislative session. The Initiative also has a companion bill in the House of Delegates HB1330, sponsored by Economic Matters Chairman, Dereck Davis, D- Prince Georges County – Dist. 25. A working group comprised of the Maryland subscriber's group (underground facility owners/operators) and other stakeholders, the Authority undertook the facilitation of the complete overhaul of the Title XII statute. The Authority invited all significant stakeholders and allied groups to participate in this major undertaking; which began in May 2017 and culminated in November 2018 after meeting twenty-nine times. The process was governed by consensus, therefore, the final product, the 2020 Title XII Miss Utility revision bill, is a document borne out of debate and compromise.





How Maryland Measures Up...

- The Common Ground Alliance (CGA), which is the outgrowth of the Common Ground Study³ as Officially formed in 2000, the CGA represents a continuation of the damage prevention efforts. Mr. James A. Barron was part of the steering committee that led the 1999 study and was the first Chairman of the CGA. Mr. Barron now heads the “Authority “in the capacity of Executive Director, a position he has held since 2013.
- Since its inception in 2013, the Authority has received 490 Notices of Probable violations (NPV) and has assessed \$484,717.20 in fines for the Education and Outreach Fund. To-date the Authority has received \$365,804.20 in payment of the assessed fines.
- The Authority’s Education and Outreach activities continued to grow in 2018. The Authority has either participated in, or supported twenty-nine (29) events ; which reached over 150,000 members of the public as well as industry professionals. The Authority also helped to facilitate the training of 1125 industry workers at fifteen (15) training sessions; which included sessions for Spanish speakers on the “Miss Utility” law throughout Maryland. All fines collected from violators of the “Miss Utility” law go directly into the Authority’s Education and Outreach Fund, which underwrites the Authority’s training and community awareness programs.

³ Officially formed in 2000, the CGA represents a continuation of the damage prevention efforts embodied by the [Common Ground Study. Sponsored by the U.S. Department of Transportation and completed in 1999, this Study represents the collaborative work of 160 industry professionals who identified best practices relating to damage prevention.](#)

- The Authority website; which is currently undergoing a major update can also be accessed through the “Miss Utility,” One Call Concept and the USPCDs websites; which are the portals for on-line excavation ticket requests. In addition, our members and allied partners are encouraged to share links that could be placed on the Authority’s website, to other relevant organizations, training opportunities and conferences. The Authority continues to purchase materials and create literature for distribution at the various conferences, conventions, and trade shows and the training sessions it attends.
- The Authority regularly participates in the MML and MACo Conferences as well as other venues and are often called on to participate in national forums on underground safety. The Authority and its stakeholder partners continue to produce instructional materials in Spanish in order to better serve the many Latino underground utility and construction companies and their workers who operate in Maryland.
- At the request of the major Maryland stakeholders (Washington Gas, Columbia Gas, Chesapeake Utilities, BGE, Comcast, PEPCO, Verizon, MML, MACo, Pipeline Operators, Contract locators, Utility Contractors, Commercial Developers, Home Builders, Multi-family Housing, Miss Utility and others) the Authority is facilitating the complete overhaul of Maryland’s underground facilities law. The first meeting of the Title XII–Miss Utility rewrite was held in May of 2017 and continued on through 2018. The bill SB 877 sponsored by Senate Finance vice-chairman Brian Feldman D-Montgomery County has been introduced and is scheduled for a hearing on February 24, 2020 in the Senate Finance Hearing Room in Annapolis. The companion house bill (HB1330 was filed on February 7, 2020

**Know what's below.
Call  before you dig.**



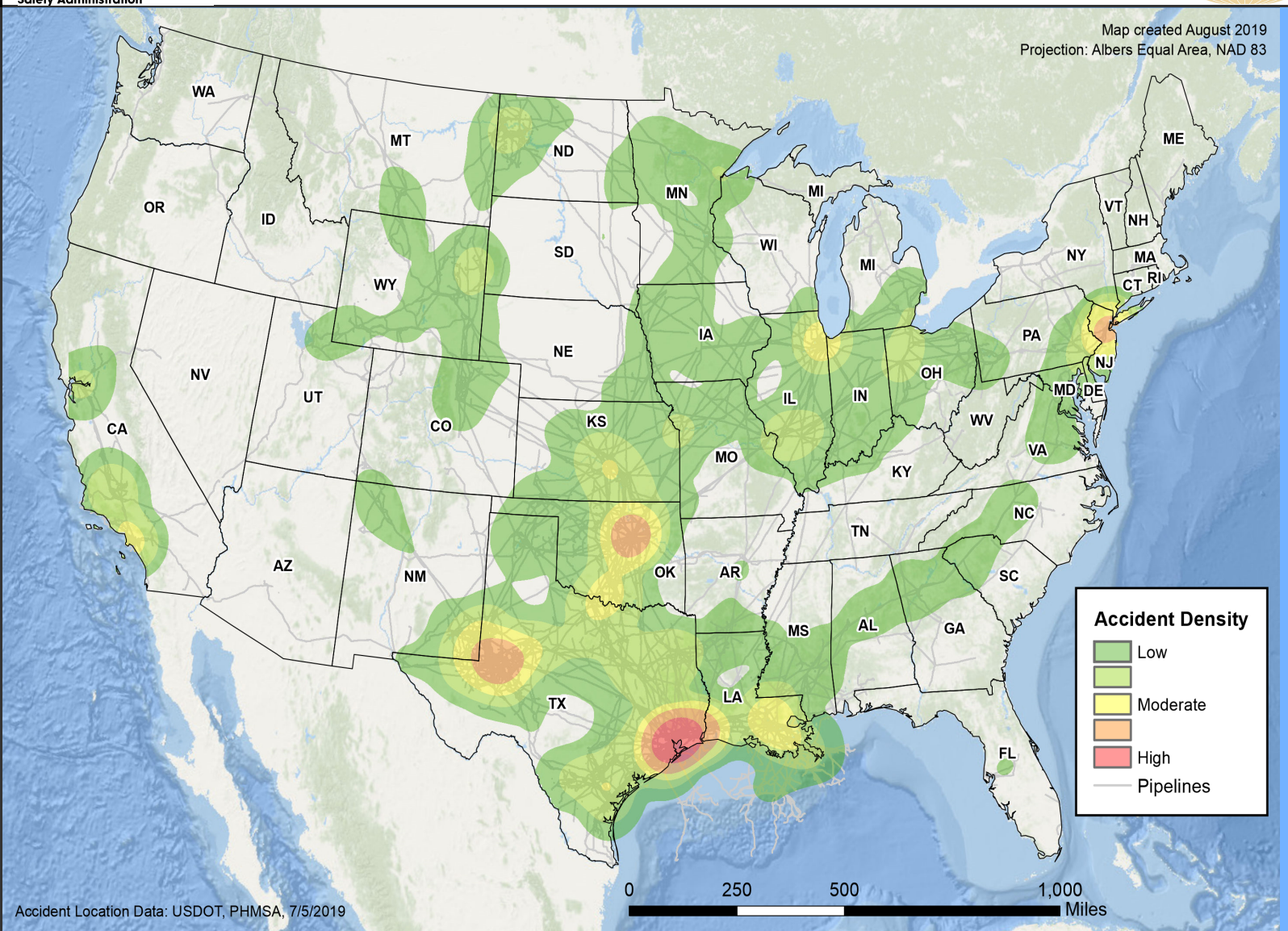
U.S. Department of Transportation
Pipeline and Hazardous Materials
Safety Administration

Hazardous Liquid Pipeline Accident Heat Map⁴

2010 - Present

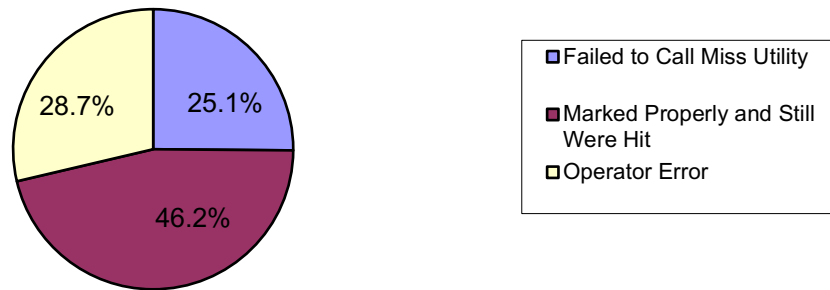


Map created August 2019
Projection: Albers Equal Area, NAD 83



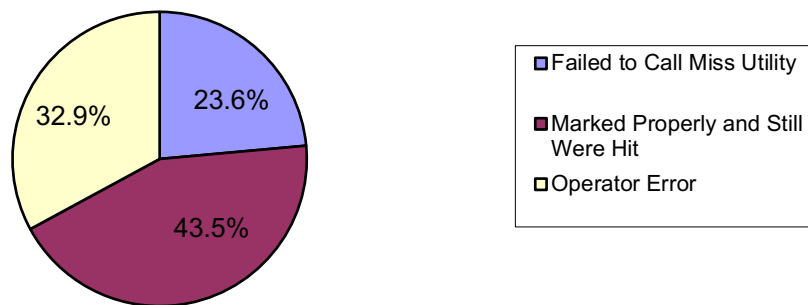
⁴ Source: USDOT/Office of Pipeline Safety/Pipes and Hazardous Materials Safety Administration

Damages for State of Maryland 2017



Failure to Call 811	241	25.1%
Marked Properly and Still Were Hit	443	46.2%
Operator Error	275	28.7%
Total	959	100%

Damages for State of Maryland 2018



Failed to Call Miss Utility	237	23.6%
Marked Properly and Still Were Hit	438	43.5%
Operator Error	331	32.9%
Total	1006	100%

⁵ Source: Maryland Public Service Commission Annual Report



2019 NPVs by the Numbers in Maryland

128 NPV's were handled by the Authority in 2019:

- 1 NPV from 2016 which went to a Formal Hearing.
- 1 NPV from 2017 which went to a Formal Hearing

71 NPV's filed in 2018 were handled by the Authority in 2019:

46 of those went to some type of a closed status.

- 3 went to a Formal Hearing.
- 2 were closed with the fine paid and training completed.
- 1 went to "Closed/Incomplete"⁶ status.

25 were reviewed in 2018, carried over to 2019 and closed.

- 17 were closed with fine paid and training completed.
- 6 went to "Closed/Incomplete" status.
- 1 was withdrawn by the complainant.
- 1 of those was rejected by the Authority for "Insufficient Evidence".

⁶These cases received this status for a number of reasons. Most notably were those companies that refused to accept certified mail notices or had bad addresses and were not locatable. Another group refused to participate in Damage Prevention Training or took training but did not pay their fines. NPV's in this category will be reopened should another violation be reported to the Authority and used as additional evidence when being evaluated by the Authority Board.

18 were reviewed by the Authority in Closed Executive Session.

15 were closed with the fine paid and training completed.

1 went to “Closed/Incomplete” status.

2 were rejected by the Authority for “Insufficient Evidence”.

25 remain open in various stages.

7 went to a Formal Hearing.

3 remain open with no fine paid and no training completed.

4 of those remain open with the fine paid but training not completed.

10 were received in 2018, carried over to 2019 and remain open.

4 remain open with no fine paid and no training completed.

6 of those remain open with the fine paid and the training not completed.

55 new NPV’s were filed with the Authority in 2019.

43 were reviewed by the Authority in “Closed Executive Session”

1 went to a Formal Hearing and remains open with the fine paid and training not completed.

23 remain open with no fine paid and no training completed.

5 remain open with the fine paid and training not completed.

8 were closed with the fine paid and training completed.

3 went to “Closed/Incomplete” status.

1 was closed with as “No Violation”.

1 was closed as “Insufficient Evidence”.

1 was withdrawn by the complainant

1 NPV was never reviewed by the Authority since it was withdrawn by the complainant

The remaining eleven (11) were not reviewed in 2019 but will be reviewed in 2020.



2020 Revisions to the Title XII – Maryland Miss Utility Law

SB877/HB1330

Executive Summary of Proposed Revisions to the Miss utility Law (811)

The Title XII law has been in effect since 2010, with very few changes over the ensuing years. At the request of the major Maryland stakeholders, which included: Washington Gas, BGE, PEPCO, Columbia Gas, Chesapeake Utilities, Comcast, Verizon, Pipeline Operators, Contract locators, Utility Contractors and Miss Utility, the Authority convened a steering committee to review and make amendments to the law. In addition, organizations representing commercial developers, home builders, multi-family housing, Realtors, plumbers MML, MACo, MDOT/SHA and other allied industries were invited to participate in the re-write project. A majority of those invited participated on a regular basis, some organizations chose not to participate or send representatives. Each participating organization selected a lead person and an alternate to represent their interest groups

Targeting a 2020 General Assembly session introduction date, the Authority convened a steering committee to tackle the overhaul of the Title XII statute. The group agreed to operate under a “consensus model”; which was utilized when Common Ground Study was conducted to develop, in conjunction with the U.S. Department of Transportation – Pipeline and Hazardous Materials Administration (PHMSA), the national model for underground facility safety; which mandated the establishment of State Damage Prevention Programs in all fifty states and its territories.

The committee met twelve (12) times in 2017 and another eighteen (18) sessions in 2018 for a total of thirty (30) work sessions with a number of significant agreements coming forward for the 2020 draft legislation. Some of these proposed changes include:

- **Definitions** -- New or enhanced definitions were added for: Clear Evidence, Contract Locator, Cross Bore, Damage, Detectable and Locatable, Emergency Excavator, Extent of Work, Mark, Primary and Temporary Excavator, Trenchless Technology, Underground Facility.

- **Exemptions** -- The Homeowner Exemption⁷ was removed at the request of PHMSA/U.S.DOT. Homeowners will not have to join Miss Utility but will have to call Miss Utility (811) if they plan to do any major digging on their property. However, “reasonableness” would not require an 811 call if flowers are being planted in an existing flower bed.
- **Utility Detection Improvements** -- New language was added that all utilities must be “Detectable and Locatable” installed after 10/1/2021. This is an amplification of the tracer wire requirements added in 2016 so that previously unlocatable facilities such as storm sewer lines can be located in order to avoid cross borings
- **Authority Operations** -- Some housekeeping changes have been made to the Authority processes, such as Operating Procedures, Member Replacement, Funding, Enforcement and Hearing Procedures.
- **Emergency Tickets** -- Additional language was added to clarify what a true emergency excavation or demolition is. This was done to address the large number of abuses of the Emergency Ticket designation.
- **Subcontractor Relief** -- A “Temporary Excavator” category has been added to allow contractors to bring a subcontractor in under his existing ticket in certain circumstances. This was done to reduce the number of inadvertent violations caused by the common practice of using an operator and his equipment on an as needed basis.
- **Markings** -- Changes were made to the marking requirement to clarify when a contractor should call Miss Utility for additional markings, such as when the marks need to be refreshed, the excavation site has enlarged, or a temporary excavator is to be used.

⁷ See January 28, 2020 letter from PHMS regarding Maryland program exemptions (page 20 of this report)

- **Ticket Size** – Guidelines were added to clarify the enhanced definition for “Extent of Work”. This change will reduce the size and scope of the marking request to allow the locator to focus a more defined area of disturbance and cut down on unnecessary markings.
- **Designer Tickets** -- “Designer Requests” designations have been broadened to “Other Requests”. As a result, any Non-Excavation ticket request has been paired down to providing accurate contact information so that the designer can have ready access to the underground facility owner’s representative. And, notification language was added so that excavators who suspect a potential Cross Bore, can call Miss Utility to alert the facility owner of the potential issue.
- **Civil Penalties** -- Language from the March 26, 2016 Maryland Court of Appeals decision in the Reliable Contracting vs. MUFDPA case, that requires the Authority to consider three factors when assessing fines has been added to the statute. Allows the increase of maximum fines for all subsequent violations. Current law only applies a second failure to call Miss Utility. Also, at the discretion of the Authority a penalty for failing to appear at a formal hearing may be assessed and would allow fines to be assessed on Emergency Ticket abusers.
- **“Call before you Clear”** -- Several jurisdictions around the country have initiated programs to encourage plumbers and public works departments to call before they clear sewer clogs outside the public right-of-way. This issue has arisen as a result of the proliferation of “legacy” cross-bores and the ensuing dangers of clearing sewer clogs with mechanical devices. Several remedies are under discussion by the Title XII rewrite committee. In 2016, the Authority amended the Title XII statute to require sewer laterals on private property to be equipped with detectable tracer wire in order to address threats of “cross boring” to homeowners.

Hidden Dangers in Maryland... “Legacy” Cross-Bores



***Unlocatable storm sewer with an intersecting gas line --
This is a classic Example of a “Cross-Bore”.***

Across the State of Maryland, a myriad number of “legacy” cross bores go undetected. Under current statute, storm water lines are not required to be marked nor are they detectable in today’s world, these innocuous conduits for stormwater can become ticking time-bombs if they have been compromised by a gas main or high voltage electric lines. This has become a health and safety issue for both utility and maintenance workers as well as the general public. The Title XII Committee feels it is imperative to address this issue in the 2020 draft.

“Call before you Clear”- Several jurisdictions around the country have initiated programs to encourage plumbers and public works departments to call before they clear sewer clogs outside the public right-of-way. This issue has arisen as a result of the proliferation of “legacy” cross-bores and the ensuing dangers of clearing sewer clogs with mechanical devices. Several remedies are under discussion by the Title XII rewrite committee.

In 2016, the Authority amended the Title XII statute to require sewer laterals on private property to be equipped with detectable tracer wire in order to address threats of cross boring to homeowners. In 2016, the Maryland General Assembly overwhelmingly approved the measure; which was a big first step in addressing this issue. Language will be added to the 2020 draft legislation to widen the application of detectable or locatable technology and means in both definition and practice in order to further protect infrastructure and Maryland's citizens from these potentially deadly situations.

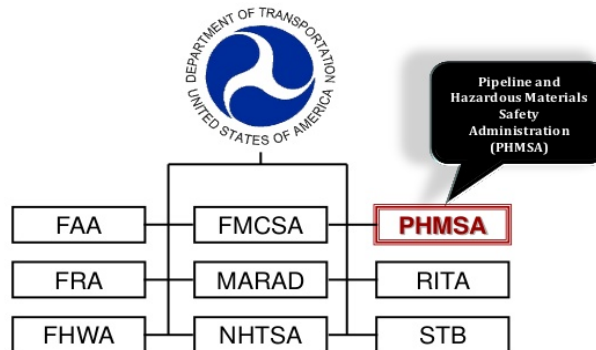


**Know what's below.
Call 811 before you dig.**

Maryland Authority's Federal Oversight



Who is PHMSA - DOT/PHMSA?





U.S. Department of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

January 28, 2020

Mr. Jim Barron
Executive Director
Maryland Underground Facilities Damage Prevention Authority 7223 Parkway
Drive Hanover, MD 21076

Dear Mr. Barron:

We understand that Maryland Underground Facilities Damage Prevention Authority (Authority), through a stakeholder group, will propose significant revisions to the State excavation damage prevention law this year, to strengthen and clarify the existing law. The Pipeline and Hazardous Materials Safety Administration (PHMSA) appreciates these efforts and is encouraged that you are working proactively to address possible gaps or weaknesses in Maryland's law.

One of the proposed updates modifies the definition of "excavator" in the law by removing the "Homeowner Exemption" from the law. This law currently excludes private property owners working on their property with non-mechanized equipment from the definition of "excavator". PHMSA supports this proposed improvement to Maryland's law. In 2014, PHMSA conducted "A Study on the Impact of Excavation Damage on Pipeline Safety." In that study, PHMSA cited certain key findings, which read in relevant part as follows:

"PHMSA believes that State one-call damage prevention laws should apply to all excavators. No entities should be exempt from the one-call notification process. Activity based exemptions may be acceptable, but they should be determined at the State level, should be based on circumstances unique to each State, and should be data-driven. That is, all exemptions should be validated by data showing that specific exemptions do not result in an increased frequency of damage to underground facilities."

It should be noted that every pipeline damage can result in serious consequences. Removing the current exemption for property owners would be a step towards improved safety in Maryland and would be consistent with PHMSA's findings from the 2014 study. PHMSA encourages the Authority to work with all stakeholders in Maryland to collect data that would provide a more complete picture of the causes of damages and/or violations, so that future needed changes to Maryland's "one call" law can be supported.

Mr. Jim Barron

Page 2

We thank you for your dedication to safety and interest in strengthening the Maryland law, and we look forward to continued improvement in Maryland's damage prevention program. If we can be of further assistance, please feel free to contact Dave Appelbaum of our staff at carl.appelbaum@dot.gov.

Sincerely,

A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

Massoud Tahamtani

Deputy Associate Administrator, Office of Pipeline Safety

Call Before You Dig!

Dig Safely. Four simple steps that could save your life.

- ✓ **Call before you dig.**
- ✓ **Wait the required time for facilities to be marked**
- ✓ **Respect the marks.**
- ✓ **Dig with care.**

Private homeowner or professional contractor, it is very important that you call the one-call utility notification center before digging. All states have established one-call notification centers and require by law that you call 48 to 72 hours before digging.

Careless digging threatens pipelines and other underground facilities and, consequently, people. Each year underground facilities are damaged during excavation. This involves hundreds of thousands of incidents, with many of these incidents resulting in injuries and fatalities.

Use of the one-call process, along with other damage prevention initiatives, has significantly increased excavation safety. One-call centers in the U. S. process tens of millions of incoming locate tickets annually. However, excavation damage still occurs, and a major reason is that many people still do not call before digging. They may simply neglect to call or they may consciously decide not to call. They might be concerned about project delays or costs; they might assume there are no underground facilities affected; or, they may believe that previous calls for other project suffice. However, failure to call each time before digging can lead to hazardous consequences.

Every digging project requires that you call the one-call center before digging – even small projects like planting trees or shrubs. If you hit an underground utility line while digging, you could harm yourself and those around you and disrupt vital services to an entire neighborhood or community. You could also be responsible for fines and repair costs.

Now you can simply dial “811” to reach the one-call center, regardless of where you are digging. Digging safely means calling 811 before each job. Whether you are a homeowner or a professional excavator, your call to 811 allows affected facility operators to locate and mark their underground facilities in the area in which you are digging. There is no cost to you — even the call is free — so **Call 811 Before You Dig**. Follow this link for more information on [811](#).

If you can’t connect to the one-call center by dialing 811, dial 1-888-258-0808 to get a toll-free direct-dial number for the one-call center in your area. Remember, it is your responsibility — you must call before digging.

When you call, the one-call center will collect information about the location of your intended dig and then contact the companies that may operate underground facilities in that location, facilities such as hazardous liquid and natural gas pipelines, telecommunications systems, electrical utilities, and sewer and water pipelines. Those companies must, by law, determine if their facilities could be affected by your excavation. If so, they must visit the excavation site and mark the exact location of their facilities with flags or paint. State laws specify how much time they have to perform these actions and, thus, how far in advance you must call before digging.

Don't assume that you know what's below. Protect yourself and those around you. Call 811 before you dig, every time. The call is free and there is no cost to you for having the underground lines marked. It is your responsibility to call before you dig, wait the required time for facilities to be located and marked, respect the marks and dig with care to avoid damaging underground facilities.

Remember - these four steps could save your life and the lives of others.

- ✓ Call before you dig.
- ✓ Wait the required time for facilities to be marked
- ✓ Respect the marks.
- ✓ Dig with care.



**Know what's below.
Call before you dig.**



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

1200 New Jersey Avenue, SE
Washington, D.C. 20590

1 JAN 06 2020

Overnight Express Mail

Mr. Jim Barron
Executive Director
Maryland Underground Facilities Damage Prevention Authority
7223 Parkway Drive, Suite 100
Hanover, Maryland 21076

Dear Executive Director Barron:

On November 21, 2019, a representative of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of Maryland's enforcement of its excavation damage prevention law. PHMSA conducted this evaluation pursuant to 49 United States Code § 60114 and 49 Code of Federal Regulations Part 198, Subpart D -- State Damage Prevention Enforcement Programs. Based on this evaluation, PHMSA has determined that the enforcement of Maryland's excavation damage prevention law is "adequate."

As you may be aware, excavation damage continues to be a leading cause of pipeline failures, some of which have resulted in fatalities, serious injuries, and environmental damage. Nationwide statistics show that effective enforcement of state damage prevention laws reduces excavation damage and pipeline incidents, resulting in enhanced public safety.

In closing, PHMSA appreciates your dedication to safety and encourages the Maryland Underground Facilities Damage Prevention Authority to continue to support damage prevention outreach initiatives that promote 811 and safe digging practices. Should you have any questions regarding this letter, please contact Dr. Christie Murray, our Director of Outreach and Engagement, at (202) 366-4996 or by email at Christie.Murray@dot.gov.

Sincerely,

Massoud Tahamtani
Deputy Associate Administrator, Policy and Programs
Office of Pipeline Safety

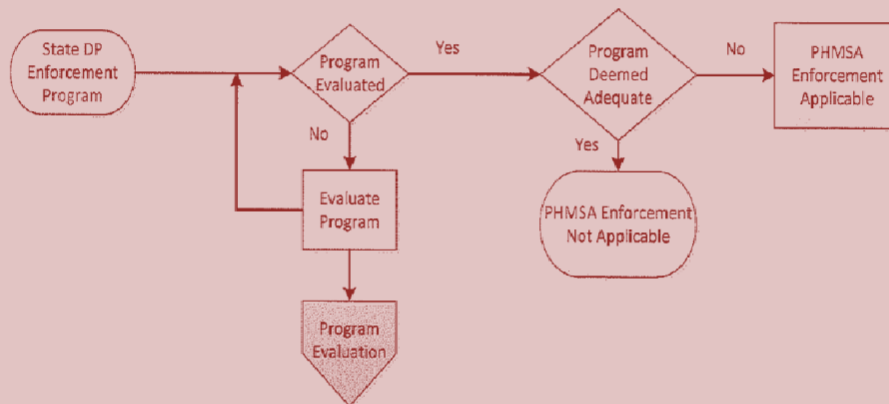
cc: Ms. Susan Ann Mary Stroud, Deputy Director, Maryland Underground Facilities Damage Prevention Authority

2018 PHMSA Maryland State Damage Prevention Program Evaluation

The Evaluation Process

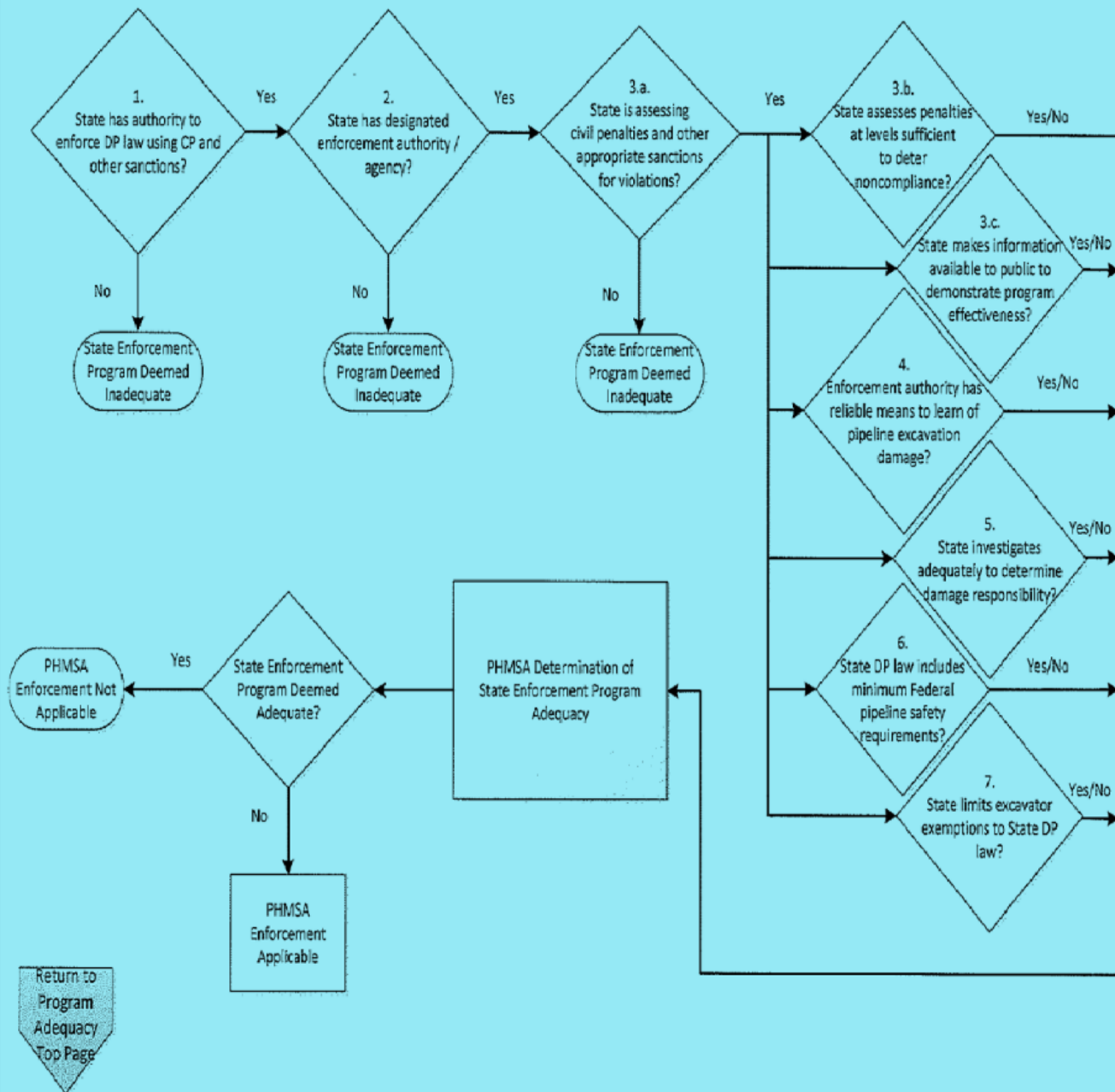
State Damage Prevention Enforcement Program Adequacy

- Reference: 49 CFR 198 Subpart D
- Note: 49 USC 60114(f) limitation is not applicable to PHMSA 1st and 2nd party excavator enforcement



PHMSA Weighting System for establishing State Damage Prevention Program Adequacy

Evaluating Adequacy of State Enforcement Programs



**STATE EXCAVATION DAMAGE PREVENTION LAW ENFORCEMENT PROGRAM EVALUATION CHECKLIST Refer to
Guidance While Reviewing Checklist**

State: Maryland

Date: 11/21/2019

Determination letter recipients:

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Maryland Underground Facilities Damage Prevention Authority
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Total score: 252

Introductory discussion of State excavation damage statistics.

Note: Throughout this checklist, PHMSA uses the terms “enforcement authority”, “supporting organization”, and “State” to identify organizations that may have primary responsibility for the action addressed in any specific question. PHMSA recognizes that States/territories have established their own processes and authorities for enforcing their one-call laws.

General – PHMSA to complete G questions and ask State to validate.

G.1.	What is the code citation for the State excavation damage prevention law/requirements? Annotated Code of Maryland, Public Utilities Article 12 Underground Facilities; Sections 12-101 through 12-135 Comments: The enforcement authority determined that the Title XII re-write legislation would be introduced in the 2020 session of the MD General Assembly, due to a 43% combined turnover of seats in the House and Senate.
G.2.	When was/were the State excavation damage prevention law/requirements most recently updated? Senate Bill 480 and House Bill 696 passed during the 2016 Legislative Session and became law on June 1, 2016 Comments:
G.3.	What recent changes have been made to the State excavation damage prevention law/requirements?

	<p>Section 12-111 was amended by Senate Bill 480 and House Bill 696 during the 2016 legislative session and became law on June 1, 2016 giving the Authority the ability to assess and charge \$.05 per outgoing ticket from the MD Call Center excluding Maryland counties and municipalities creating an expected \$250k per year revenue stream for the Authority.</p> <p>Comments:</p> <p>The proposed 811 amending legislation will remove the homeowner exemption, create a voluntary damage reporting system and require all underground facilities to be either locatable or detectable; this will include all storm drain systems in the public right-of-way installed or undergoing major repair after October 2020.</p> <p>Update: The enforcement authority determined that the Title XII re-write legislation would be introduced in the 2020 session of the MD General Assembly, due to a 43% combined turnover of seats in the House and Senate.</p>	
Guidance	<p>G.3.: PHMSA is seeking to understand changes in the law pertaining to enforcement procedures, reporting, transparency, exemptions, and other relevant topics. Questions G.1. through G.3. are for information only. Criterion 1—Does the State have the authority to enforce its State excavation damage prevention law using civil penalties and other appropriate sanctions for violations?</p>	
1.a.	<p>Does the State have the authority to enforce its State excavation damage prevention law using civil penalties and other appropriate sanctions for violations? If the answer is “No”, enforcement of the State excavation damage prevention law is deemed inadequate.</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/> Comments:</p>	<p>Pass/Fail</p> <p><u>Pass</u></p>
1.b.	<p>Cite the portion of the excavation damage prevention law/requirements that enables enforcement.</p> <p>Section 12-135 Civil Penalties</p> <p>Comments:</p> <p>The overhaul of the 811 statute will increase certain fines for repeat violations other than failure to call the on-call system. In addition, repeat offender will have the potential of having fines doubled to each section of the subsection which was violated.</p>	<p>Information Only</p>
Guidance	<p>1.a.: This question is pass/fail. To pass this question, the State must have the authority to issue civil penalties for violations of the State one-call law; they do not have to demonstrate that they have used the authority. If the answer to 1.a. is “No,” the State excavation damage prevention law enforcement program is inadequate. PHMSA does not consider criminal penalties to be “other appropriate sanctions”. Other appropriate sanctions may include, but are not limited to, warning letters, mandatory training, etc.</p>	

Criterion 2 - Has the State designated a State agency or other body as the authority responsible for enforcement of the State excavation damage prevention law?

Points: **20**

2.a.	<p>Does the State excavation damage prevention law designate an authority or authorities responsible for State-wide enforcement of the State excavation damage prevention requirements? If the answer is "No", enforcement of the State excavation damage prevention law is inadequate.</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Comments:</p>	<p>Pass/Fail <u>Pass</u></p>
2.b.	<p>Cite the portion of the law that designates enforcement authority to a State agency or other organization.</p> <p>12-106 Establishes Authority</p> <p>Comments:</p>	<p>Information Only</p>
2.c.	<p>What organization(s) is the designated authority? If more than one, list them.</p> <p>MD Underground Facilities Damage Prevention Authority</p> <p>Comments:</p>	<p>Information Only</p>
2.d.	<p>How long has/have the designated organization(s) had enforcement authority?</p> <p>October 6, 2010</p> <p>Comments:</p>	<p>Information Only</p>
2.e.	<p>What are the enforcement and supporting and responsibilities of each organization involved in managing a statewide excavation damage prevention law enforcement program?</p> <p>The Authority may review and hear complaints for violations of any part of Part IV Sections 12-120 through 12-129. And assess civil penalties §12-135</p> <p>Comments:</p>	<p>Information Only</p>
2.f.	<p>What positions/roles are responsible for enforcement and supporting activities within each enforcement or supporting organization?</p> <p>The Authority Board established by §12-107, is appointed by the Governor of MD, serve as Administrative Judges when hearing Probable Violations. The Authority Board has an Administrative staff which includes the Executive Director and support staff who process, investigate and present NPV's to the Authority Board and perform all</p> <p>other administrative duties necessary for the day to day activities of the Authority.</p>	<p>Information Only</p>

	Comments: The position of Deputy Director was been created with greater responsibilities in order to give the Executive Director additional time to conduct more damage investigations.	
2.g.	Does the enforcement process include a stakeholder advisory committee? Yes <input type="checkbox"/> No Comments: yes - The nine-member Authority Board represents the different stakeholder groups, but given that it makes the final determination, it is not a stakeholder advisory committee. They are not making recommendations to an enforcement authority, they are the enforcement authority. The Board sits as administrative judges when they hear a case – there is full appeals process. The Authority is part of the Executive Branch of MD state government.	Information Only
2.h.	What parties are subject to enforcement under the state excavation damage prevention requirements? Excavators and Operators Comments: Locators are subject to enforcement, but generally violations are filed against the operator who hires the locator. An attempt has been made to isolate contract locators from their employers in the upcoming Title XII re-write legislation.	Score (points x weight) <u>20</u>
Guidance	2.a.: This question is pass/fail. If the answer to this question is “No,” enforcement of the State excavation damage prevention law is inadequate. This question pertains to pipelines regulated under 49 CFR Parts 192 and 195. The State law may designate more than one organization as the excavation damage prevention law enforcement authority. PHMSA expects enforcement to be fairly applied to all geographic areas of the State and all PHMSA regulated pipelines, both interstate and intrastate, within the State. 2.e.: PHMSA is seeking an explanation of the process, not the names of the people personally responsible for various enforcement actions. 2.f.: PHMSA is seeking titles/roles, not names. 2.g.: Stakeholder advisory committees vary in composition and responsibilities. Typically, a committee consists of members representing damage prevention stakeholders, including underground utility operators, locators, excavators, the one call, and possibly the excavation damage enforcement authority. Some States use a committee to conduct a desk review/investigation of excavation damages and review cases/complaints and make enforcement recommendations to the State enforcement authority. 2.h.: PHMSA is seeking to understand which parties can be fined or sanctioned (e.g., locators, excavators, regulated interstate and intrastate pipeline operators, the one-call, etc.). At a minimum, PHMSA expects that both pipeline operators and non-exempt excavators be subject to enforcement under the State excavation damage prevention law. PHMSA expects enforcement to be applied to all PHMSA regulated pipelines, both interstate and intrastate, within the State. Scoring guidance <u>for question 2.h.:</u>	

2 = Satisfactory; Both pipeline operators and non-exempt excavators are subject to enforcement under the excavation damage prevention law.

0 = Unsatisfactory; Either pipeline operators or non-exempt excavators (or both) are not subject to enforcement under the excavation damage prevention law.

Question weight: 10

Criterion 3 –(a) Is the State assessing civil penalties and other appropriate sanctions for violations (b) at levels sufficient to deter noncompliance and (c) is the State making publicly available information that demonstrates the effectiveness of the State’s enforcement program?

Points:

50

3.a.1.	<p>In the previous calendar year, did the enforcement authority assess civil penalties and/or other sanctions for violations of the excavation damage prevention law involving regulated pipelines? If the answer is “No”, enforcement of the State excavation damage prevention law is inadequate.</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/> Comments:</p>	<p>Pass/Fail <u>Pass</u></p>
3.b.1.	<p>What levels of civil penalties (dollar amounts) are enabled by law?</p> <p>12-135 - Violation of any section of Part IV First violation \$2,000, \$4,000 for a second violation (no time limit) Court of competent jurisdiction may assess a civil penalty of up to 10 times the cost of repairs to the underground facility – the complainant (facility owner) may choose either this option or the lower civil penalty amount.</p> <hr/> <p>Comments:</p> <p>There are proposed increases to civil penalties in the 2019 re-write of the 811 re-write.</p>	<p>Information Only</p>
3.b.2.	<p>a. How many pipeline excavation damages occurred in the State in the previous calendar year?</p> <p>777</p> <hr/> <p>b. How many notifications of excavation damage to pipelines and/or violations of the excavation damage prevention law did the State enforcement authority or supporting organization receive in the previous calendar year?</p> <p>31</p> <hr/> <p>c. How many of the complaints or reports of pipeline excavation damage were investigated by the State for violations of the State excavation damage prevention law?</p> <p>31</p> <hr/> <p>e. Total number of civil penalties assessed in previous calendar year involving regulated pipelines:</p> <p>\$38,566.00 – MD Authority</p>	<p>Information Only</p>

i. Dollar range of actual civil penalties assessed:
Authority = \$900.00 - \$2,000.00

	Comments: The statute allows for doubling the \$2,000.00 fine for a no-call to \$4,000.00 for each subsequent no-call offenses.	
3.b.6.	How does the enforcement authority or supporting organization assess the effectiveness of enforcement actions over time using data and other relevant information? See guidance. The Authority in partnership with the MD Public Service Commission and the MD Subscribers Group began pooling damage reports in 2018. The Authority also utilizes the CGA Dirt report as a baseline indicator. The Title XII statute re-write includes language that sets out guidelines for damage reporting to the Authority.	Score (points x weight) Points to increase in CY 18 <u>20</u>
3.b.7.	How has the State enforcement authority or supporting organization utilized its assessment of effectiveness to make program adjustments? See guidance. Based on trends, the Authority will reemphasize in its training areas of concern. The Authority also monitors comments during the MD/DC Damage Prevention Committee's monthly meetings to ascertain if new issues are arising in the field	Score (points x weight) Points to increase in CY 18 <u>20</u>
3.c.1.	Does the State make information about enforcement actions and outcomes publicly available? <input type="checkbox"/> Yes <input type="checkbox"/> No Comments: Enforcement actions are reported annually to the MD Legislature which is available to the public upon request. Enforcement action is also available on the Authority website. www.mddpa.org	Score (points x weight) <u>10</u>
3.c.2.	What information does the State make publicly available? The names of the violators, sections of the statute violated, hearing outcomes, Authority determinations. All meetings are advertised and all meeting minutes are published on the Authority website.	Information Only
3.c.3.	How/where does the State make information publicly available? www.mddpa.org - the Authority website and also produce an annual report to the Legislators and the Governor. And upon request.	Information Only
	Comments: With the Authority's website overhaul, preparations are being made to list all companies that are not in good standing with the Authority. This information will be available to the general public.	

Guidance	<p>General: PHMSA seeks records that demonstrate that the State is regularly and consistently using its enforcement authority and imposing appropriate sanctions for violations of the State excavation damage prevention law against pipeline operators and excavators. Sanctions may include civil penalties, mandatory training, warning letters, or other similar activities. States should also be able to demonstrate if the enforcement programs include escalating sanctions. If a State cannot demonstrate use of its enforcement authority, enforcement of the State excavation damage prevention law will be deemed inadequate.</p> <p>PHMSA expects States to demonstrate the impact of the State’s enforcement program. PHMSA expects States to maintain records that demonstrate a relationship between the State’s enforcement activities and the rate of excavation damage incidents. PHMSA acknowledges that many factors can influence excavation damage rates. However, PHMSA believes that an effective enforcement program includes evaluation of the effects of enforcement activities. The result of PHMSA’s review of a State’s records in this regard will not, by itself, be grounds for deeming enforcement of the State’s excavation damage prevention law inadequate.</p> <p>PHMSA expects State enforcement programs to generally make excavation damage prevention law enforcement information and statistics available to the public via a website. PHMSA does not expect States to violate any State laws, jeopardize any ongoing enforcement cases, or post information that would violate the privacy of individuals as defined by State or Federal law. The result of PHMSA’s review of the public availability of a State’s information and statistics will not, by itself, be grounds for deeming enforcement of the State’s excavation damage prevention law inadequate.</p> <p>3.a.1.: This question is pass/fail. If the answer to this question is “No,” enforcement of the State excavation damage prevention law is inadequate.</p> <p>3.b.2.: PHMSA is seeking records of every enforcement action in the previous calendar year.</p> <p>3.b.3.: Examples of other sanctions include warning letters, mandatory training, documented verbal warnings, etc.</p> <p>3.b.4.: PHMSA is seeking the number of sanctions applied to each party.</p> <p>3.b.6.: PHMSA believes this is critical to a strong damage prevention program with adequate enforcement. PHMSA is seeking to understand if the enforcement authority or supporting organization evaluates damage rates and other relevant information, including causes of damages, repeat one-call law offenders, trends, root causes, geographic trends, etc., to identify excavation damage risks so that enforcement activities may be adjusted. The State should explain how the State uses data, including mandatory/voluntary reporting to the State, one-call center, operator provided information, complaints, and/or PHMSA, to evaluate the impacts of their enforcement activities.</p> <p><i>Scoring guidance for question 3.b.6.</i></p> <p><i>2 = Satisfactory; The State thoroughly evaluates damage rates and other relevant information in relation to enforcement activities.</i></p> <p><i>1 = Needs Improvement; The State evaluates some information in relation to</i></p>
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enforcement activities, but the information cannot be used to conduct a complete/thorough evaluation.

0 = Unsatisfactory; The State does not evaluate damage rates and other relevant information in relation to enforcement activities in any meaningful way.

Question weight: 10

3.b.7.: PHMSA believes this is critical to a strong damage prevention program with adequate enforcement. PHMSA is seeking to understand what the enforcement authority or supporting organization has learned from evaluating damage rates and other relevant information as identified in question 3.b.6, and how the State is using what it has learned to make adjustments to the enforcement program. For example, an enforcement or supporting organization should be learning which parties or activities in the State are causing excavation damage and tailoring the enforcement program to address risk.

Scoring guidance for question 3.b.7.:

2 = Satisfactory; Using supporting data, the State thoroughly understands the impact of enforcement on the State's excavation damage prevention program. Using supporting data, the State can demonstrate which parties or activities in the State are causing excavation damage, what are some of the root cause issues, and the actions taken in the State to reduce damages. The State actively uses the results of its enforcement program to continuously improve the program to address risk.

1 = Needs Improvement; The State has some supporting data that demonstrates the impact of enforcement on the State's excavation damage prevention program, but the State's understanding of the impact of enforcement is limited. The State may have anecdotal evidence of the impact of enforcement, but cannot support claims with data. Accordingly, the State's ability to assess risks and make meaningful adjustments to its enforcement program are limited. 0 = Unsatisfactory; The State cannot make any meaningful claims about the impact of enforcement on the State's excavation damage prevention program due to a lack of supporting data or other information. Accordingly, the State is essentially unable to assess risks based on data and make meaningful adjustments to its enforcement program.

Question weight: 10

3.c.1.: General information about enforcement actions should be made available to the public proactively. Scoring guidance for question 3.c.1.:

2 = Satisfactory; General information about enforcement actions are made available to the public. Public information about enforcement actions is made available on an ongoing basis and is current.

1 = Needs Improvement; The State makes some information available to the public, e.g. enforcement hearing schedules or general information regarding the State's excavation damage prevention enforcement program, but lacks visibility into the State's enforcement actions and results of the program.

0 = Unsatisfactory; The State makes very limited or no information publicly available regarding the State's excavation damage prevention program and State enforcement actions/results.

Question weight: 5

3.c.2.: Information about the enforcement program, including number of actions, types of violations and sanctions should be publicly available on a web site. At a minimum, PHMSA expects enforcement authorities to publicly share the number and types of enforcement actions taken in a given year (e.g., civil penalties, warning letters, mandatory training sessions, and similar information).

3.c.3.: PHMSA expects this answer to include a website address.

Criterion 4 - Does the enforcement authority have a reliable mechanism (e.g., mandatory reporting, complaint-driven reporting) for learning about excavation damage to underground facilities?

Points: 26

4.a.	<p>Does the enforcement authority or supporting organization have a reliable mechanism (e.g., mandatory reporting, complaint-driven reporting) for learning about violations of the excavation damage prevention law? What is the mechanism?</p> <p>Although the Authority operates under a complaint driven model, its partnership with the MD Public Service Commission and the MD subscribers, we are able to observe trends and the effectiveness of our training programs and message. During the 2018 reporting period we have seen a decrease in damages due to “no calls” and a slight increase in operator error.</p> <p>Comments:</p> <p>A more formal process for reporting damages is under consideration with the 811 statute re-write. This program could entail the mandatory filing of damage tickets by excavators, a web based portal for voluntary damage reporting; or more regular reporting of voluntary damage data from the MD subscribers group.</p>	Score (points x weight) <u>20</u>
4.b.	<p>Cite the portion of the excavation damage prevention law/requirements that addresses how to report suspected violations.</p> <p>The draft Title XII re-write bill includes guidelines for voluntary reporting to the Authority via its revamped website. However, all pipeline damages in the state must be reported to the Public Service Commission. Therefore, in effect, we have mandatory reporting in Maryland.</p> <p>Comments:</p>	Information Only
4.c.	Question removed.	Information Only
4.d.	<p>How does the enforcement authority or supporting organization inform stakeholders about the process for reporting violations of the excavation damage prevention law?</p> <p>Through advertising in major markets. Bilingual training programs. High visibility at relevant conferences, literature and training. The Authority, makes every effort to customize its message to suit its target audiences..</p> <p>Comments:</p>	Score (points x weight) <u>6</u>

<p>the enforcement authority. The result of PHMSA’s review of a State’s activities under criterion 4 will not, by itself, be grounds for deeming enforcement of the State’s excavation damage prevention law inadequate.</p>	
<p>4.a. PHMSA expects that violations of the State excavation damage prevention requirements may be reported by any stakeholder involved in excavation damage to a pipeline.</p> <p><u>Scoring guidance for question 4.a.:</u></p> <p><i>2 = Satisfactory; The State has a reliable mechanism for learning about law violations. The mechanism is clearly defined in the written State excavation damage prevention requirements, and may include mandatory reporting or complaint-based reporting of excavation damages. All damage prevention stakeholders are empowered to report law violations enforcement authority. The State’s process for violation reporting is available on a public web site.</i></p> <p><i>1 = Needs Improvement; The State has some means of learning about law violations to underground facilities, but it is not reliable in all cases (e.g., State actively learns about law violations through patrols, media, limited stakeholder reporting, etc., but some damage prevention stakeholders do have a means of notifying the State when a damage occurs).</i></p> <p><i>0 = Unsatisfactory; The State does not have a reliable means of learning law violations. Stakeholders have no means of reporting law violations to State and the State has no means of addressing stakeholder reports of law violations.</i></p> <p>Question weight: 10</p>	<p>to the readily</p> <p>the</p> <p>not</p> <p>about the</p>
<p>4.d.: PHMSA expects that the enforcement authority, supporting organization, and/or other damage prevention stakeholders are proactively educating all stakeholders about the reporting process, and provide a point-of-contact for questions on how to report law violations.</p> <p><u>Scoring guidance for question 4.d.:</u></p> <p><i>2 = Satisfactory; The enforcement authority, supporting organization, other damage prevention stakeholders can demonstrate they proactively educate all damage prevention stakeholders about the process for reporting law violations. The educational program is documented and available to all stakeholders.</i></p> <p><i>1 = Needs Improvement; The enforcement authority, supporting organization, and/or other damage prevention stakeholders demonstrate effort to educate stakeholders about the process for reporting law violations, but the educational program is not proactive or documented, is on a limited basis, and/or the outreach may not focus on all stakeholders responsible for ensuring damage prevention.</i></p> <p><i>0 = Unsatisfactory; The enforcement authority, supporting organization, and/or other damage prevention stakeholders do not have a process for educating stakeholders about the process for reporting law violations.</i></p> <p>Question weight: 3</p>	<p>and/or</p> <p>some</p> <p>used</p>

Criterion 5 - Does the State employ excavation damage investigation practices that are adequate to determine the responsible party or parties when excavation damage to underground facilities occurs?

Points: 70

5.a.	<p>What organization conducts the damage investigation?</p> <p>The MD Authority and staff conducts the investigations.</p> <p>Comments:</p> <p>Fully documented process and procedures on conducting investigations are available on the MDDPA website. Appendix C of the annual report to the Governor contains the process and procedures.</p>	<p>Information Only</p>
5.a.1	<p>Does the damage investigation organization have a formal relationship, e.g. a memorandum of understanding, with the enforcement authority, if the two are different?</p> <p>N/A</p> <p>Comments:</p>	<p>Information Only</p>
5.b.	<p>Does the investigation organization have documented damage investigation processes and procedures to ensure consistency in how investigations are conducted?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No Comments:</p> <p>Fully documented process and procedures on conducting investigations are available on the MDDPA website. Appendix C of the annual report to the Governor contains the process and procedures.</p>	<p>Score (points x weight)</p> <p><u>20</u></p>
5.c.	<p>Does the investigating organization investigate all pipeline excavation damages that it learns about (in the field or in the office) or use written procedures to determine when an investigation is warranted.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No Comments:</p> <p>The state investigates all NPVs filed.</p>	<p>Score (points x weight)</p> <p><u>20</u></p>
5.d.	<p>What information does the investigation organization collect when investigating excavation damages, and from whom?</p> <p>The Authority produces a Damage Investigation Report that includes photos, diagrams, daily logs, daily work sheets, written descriptions of the incident, sketches, statements, correspondence including letters and emails, Miss Utility tickets and status reports provided by the complainant and probable violator.</p> <p>Comments:</p>	<p>Information Only</p>

	The Authority produces a Damage Investigation Report that includes photos, diagrams, daily logs, daily work sheets, written descriptions of the incident, sketches, statements, correspondence including letters and emails, Miss Utility tickets and status reports...	
5.e.	Question removed.	
5.f.	How does the enforcement authority determine when to undertake enforcement action?	Score (points x weight) <u>10</u>
	All violations are run through the Standardized Fining Matrix to assess the seriousness,	
	intent and history of the violator. This applies to both excavator and pipeline operators equally.	
	Comments: The Authority is bound to investigate all violations that are formally reported through the web site portal. However, in 2017 eleven (11) cases were either dismissed due to inadequate or conflicting supporting evidence.	
5.g.	How does the State hold both pipeline operators and excavators accountable for violations of the excavation damage prevention requirements?	Score (points x weight) <u>20</u>
	Equitable enforcement is demonstrated in Criterion 3. State's damages per thousand ratio in CY2018 was 0.9, well below the National average of 2.7.	
	Comments:	
	The state enforces against every NPV complaint.	
Guidance	General: PHMSA expects State enforcement programs to be balanced with regard to how they apply enforcement authority. PHMSA expects enforcement programs to be focused on the compliance responsibilities of both excavators and pipeline operators. PHMSA seeks a pattern of pipeline excavation damage enforcement that demonstrates that penalties are consistently applied to all violators of the State excavation damage prevention requirements and are not consistently applied to only one stakeholder group. PHMSA is interested in States' excavation damage investigation practices, and especially if these practices include the opportunity for input from all parties and if there is due process in place for those accused of violating the law. The result of PHMSA's review of a State's program under criterion 5 will not, by itself, be grounds for deeming enforcement of the State's excavation damage prevention law inadequate. 5.b.: PHMSA expects the State to able to produce copies of its documented damage investigation procedures/forms/etc.	

Scoring guidance for question 5.b.:

2 = Satisfactory; The State has thoroughly documented damage investigation written procedures/forms/etc.

1 = Needs Improvement; The State has some damage investigation written procedures/forms/etc., but the documentation does not completely describe the investigation process.

0 = Unsatisfactory; The State has limited or no documented damage investigation procedures/forms/etc.

Question weight: 10

5.c.: Investigations may or may not include site visits or field investigations; investigations may include in-office reviews of evidence submitted by parties involved in a damage. If the enforcement authority does not investigate every case of pipeline excavation damage, PHMSA expects States to have a policy for determining when investigation is warranted.

Scoring guidance for question 5.c.:

2 = Satisfactory; The State investigates all pipeline excavation damages that it learns about, or the State's written policies/procedures include criteria for when an investigation is not needed.

1 = Needs Improvement; The State investigates some pipeline excavation damages that it learns about, but not all, and the State's investigation procedures do not provide sufficient guidance for determining if an investigation is needed.

0 = Unsatisfactory; The State does not investigate pipeline excavation damages on a consistent basis. Investigations are not regular or common, and many pipeline excavation damages are not investigated. Enforcement procedures do not address when an investigation is needed.

Question weight: 10

5.f.:

Scoring guidance for question 5.f.:

2 = Satisfactory; The enforcement authority either takes enforcement action in every case of pipeline excavation damage or has a documented consistent approach to determining when enforcement action is taken.

1 = Needs Improvement; The enforcement authority does not take enforcement action in every case of pipeline excavation damage or does not have a thoroughly documented approach for consistently determining when enforcement action is taken. Enforcement action does occur but is not always consistent.

0 = Unsatisfactory; The enforcement authority does not have any process for ensuring enforcement is consistently applied.

Question weight: 5

5.g.: PHMSA is seeking an explanation of the State's policy regarding equitable and consistent application of enforcement to both operators and excavators.

Scoring guidance for question 5.g.:

2 = Satisfactory; The State's approach to applying enforcement to both operators and excavators is fair, as demonstrated by enforcement records, written enforcement policies/procedures, and excavation damage data.

1 = Needs Improvement; The State applies enforcement to both operators and excavators, but records indicate that enforcement authority is clearly used more often against one stakeholder group. For example, excavators may be targeted for enforcement more often than operators, but enforcement is applied to operators in some cases.

0 = Unsatisfactory; The State applies enforcement to only one stakeholder group in most cases. For example, the enforcement program specifically and consistently targets excavators, but rarely targets operators for failing to fulfill their role in the damage prevention process. Question weight: 10

Criterion 6 -At a minimum, do the State's excavation damage prevention requirements include the following:

- Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.
- Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.
- An excavator who causes damage to a pipeline facility:
 - Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and
 - If the damage results in the escape of any natural and other gas or hazardous liquid from a PHMSA-regulated pipeline, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.

Points: 80

6.a.	<p>Does the State require excavators (who are not exempt from State requirements) to use an available one-call notification system to establish the location of underground facilities in the excavation area before engaging in excavation activity?</p> <p>Yes, Section 12-124 (a)</p> <p>Comments:</p> <p>Clarifications, modifications and new sections have been added in order to strengthen Title XII statute which will be introduced during the 2020 session of the MD Legislature.</p>	<p>Score (points x weight)</p> <p><u>20</u></p>
6.b.	<p>Does the State require that excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator?</p> <p>Yes - Section 12-127(c)</p> <p>Comments:</p>	<p>Score (points x weight)</p> <p><u>20</u></p>
6.c.	<p>Does the State require an excavator who damages a pipeline facility to report the damage to the operator of the facility at the earliest practical moment following discovery of the damage?</p>	<p>Score (points x weight)</p>

	<p>Yes, required to report to the operator. Section 12-127 (d)(1)</p> <p>Comments:</p> <p>**Full credit issued, however, State needs look at their current exemptions to ensure no relevant parties are excluded from this reporting requirement. See guidance below and scoring change to take effect CY2021.</p>	<p>Note guidance on scoring change</p> <p><u>20</u></p>
6.d.	<p>Does the State require an excavator who causes damage to a PHMSA-regulated pipeline that results in a release of natural or other gas or hazardous liquid to promptly report the release to emergency responders by calling the 911 emergency telephone number or another emergency telephone number?</p> <p>Yes - Section 12-127 (d) (2)</p> <p>Comments:</p>	<p>Score (points x weight)</p> <p><u>20</u></p>
	<p>See comments in 6.c.</p>	
Guidance	<p>General: PHMSA will review State requirements to ensure they address the basic Federal requirements in the PIPES Act for excavators such as using an available one-call system. The result of PHMSA's review of a State's requirements will not, by itself, render the State's enforcement program inadequate.</p> <p>6.a.: <i>Scoring guidance for question 6.a.:</i> <i>2 = Satisfactory; The State requires excavators (who are not exempt from State requirements) to use an available one-call notification system to establish the location of underground facilities in the excavation area before engaging in excavation activity.</i> <i>1 = Needs Improvement; The State requires excavators (who are not exempt from State requirements) to use an available one-call notification system or to contact the operators of underground facilities directly to establish the location of underground facilities in the excavation area before engaging in excavation activity.</i> <i>0 = Unsatisfactory; The State does not require excavators to use an available one-call notification system to establish the location of underground facilities in the excavation area before engaging in excavation activity.</i> <i>Question weight: 10</i></p> <p>6.b.: <i>Scoring guidance for question 6.b.:</i></p>	

2 = Satisfactory; The State explicitly requires that excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.

1 = Needs Improvement; The State requires or recommends that excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator, but the State's excavation damage prevention requirements are not explicit on this point. For example, the State damage prevention law/regulations may not have a defined tolerance zone in which hand tools or soft digging must be used, or the law/regulations may not require excavators to request re-locates when necessary.

0 = Unsatisfactory; The State does not require that excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.

Question weight: 10

6.c.: Reporting damages to a one-call center may suffice for contacting the operator directly. PHMSA urges all States to review the definitions for excavators and excavation in their excavation damage prevention law to ensure the law does not exempt anyone from the reporting requirements of 49 USC § 60114 and 49 CFR Part 198.55. **"Damage"** is defined as any excavation activity that results in the need to repair or replace a pipeline due to a weakening, or the partial or complete destruction, of the pipeline, including, but not limited to, the pipe, appurtenances to the pipe, protective coatings, support, cathodic protection or the housing for the line device or facility. **"Excavation"** refers to excavation activities as defined in 49 CFR 192.614, and covers all excavation activity involving both mechanized and non-mechanized equipment, including hand tools. **"Excavator"** means any person or legal entity, public or private, proposing to or engaging in excavation.

Scoring Change Starting in CY 2021: PHMSA will score a State as "needs improvement" if either the State's excavation damage prevention requirements are not explicit on this point or the State's definition of an "excavation" and/or "excavator" allows, or potentially allows, for certain parties (i.e., individuals covered under an exemption) to be immune from these reporting requirements.

Scoring guidance for question 6.c.:

2 = Satisfactory; The State explicitly requires an excavator who damages a pipeline facility to report the damage to the operator of the facility at the earliest practical moment following discovery of the damage.

1 = Needs Improvement; The State requires an excavator who damages a pipeline facility to report the damage to the operator of the facility at the earliest practical moment following discovery of the damage.

0 = Unsatisfactory; The State does not require an excavator who damages a pipeline facility to report the damage to the operator of the facility at the earliest practical moment following discovery of the damage.

Question weight: 10

6.d.:

Scoring guidance for question 6.d.:

2 = Satisfactory; The State explicitly requires an excavator who causes damage to a pipeline facility that results in the release of any PHMSA-regulated natural or other gas or hazardous liquid to promptly report the release to emergency responders by calling the 911 emergency telephone number or another emergency telephone number.

1 = Needs Improvement; The State requires or recommends that an excavator who causes damage to a pipeline facility that results in the release of any PHMSA-regulated natural or other gas or hazardous liquid to notify emergency responders, but does not explicitly require calling the 911 emergency telephone number or another emergency telephone number.

0 = Unsatisfactory; The State does not require or recommend that an excavator who causes damage to a pipeline facility that results in the release of any PHMSA-regulated natural or other gas or hazardous liquid to notify emergency responders, but does not explicitly require calling the 911 emergency telephone number or another emergency telephone number.

Question weight: 10

Criterion 7 - Does the State limit exemptions for excavators from its excavation damage prevention law? A State must provide to PHMSA a written justification for any exemptions for excavators from State excavation damage prevention requirements. PHMSA will make the written justifications available to the public.

Points: 6

7.a.	<p>What notification exemptions for excavators exist in the excavation damage prevention law?</p> <p>The only exemption for an excavator in Title 12 in § 12-103 – Scope of Subtitle. Does not apply to an excavation or demolition performed or to be performed by an owner or lessee of a private residence when the excavation or demolition is performed is done entirely on the land of the private residence and is done without the use of machinery. They have to perform the work themselves.</p> <p>Comments:</p> <p>This exemption has been removed in the 2020 Title XII re-write draft legislation.</p>	Information Only
7.b.	<p>Does the enforcement authority or supporting organization maintain information that demonstrates the impact of exemptions?</p> <p>No, the state does not have the data to evaluate the impact of exemptions, but the exemptions listed in 7.a. are in the legislative process to be removed. Full credit was given last year because of the pending legislative changes. However, since those changes have been delayed, and the State has not obtained robust information to satisfy this question, Half credit issued.</p> <p>PHMSA encourages the State to engage a representative sample of gas distribution operators to achieve this requirement.</p> <p>Comments:</p> <p>§12–103 excludes non-mechanical tools for owners or lessee's on their respective residential property. Federal law does not exclude non-mechanical tools from the definition of "excavation." PHMSA considers this subtitle to essentially amount to an exemption by omission and the State needs to continue to appropriately evaluate impacts.</p>	Score (points x weight) <u>3</u>

7.c.	What information does the enforcement authority or supporting organization maintain?	Information Only
	The Authority only maintains information on NPVs	
	Comments:	
	The Authority now gathers information from the MD subscribers (facility owners) committee, the MD PSC and the CGA Dirt report to use in conjunction with the NPV data to assess program effectiveness.	
7.d.	How does the enforcement authority or supporting organization use information about the impact of exemptions?	Score (points x weight) 3
	See comments in 7.b. - half credit issued.	
	Comments:	
	Once the homeowner exemption is removed from the statute there should be data available to show these impacts, provided facility owners file complaints against homeowners once this change occurs.	

Guidance	<p>General: PHMSA expects States to document the exemptions provided in State excavation damage prevention laws for any/all excavators. "Excavation" refers to excavation activities as defined in 49 CFR § 192.614, and covers all excavation activity involving both mechanized and non-mechanized equipment, including hand tools. "Excavator" means any person or legal entity, public or private, proposing to or engaging in excavation. Documentation should include the exemptions for excavators in State law and any data or other evidence that demonstrates the impact of the exemptions on the rate of excavation damage to pipelines and other underground infrastructure. PHMSA believes that exemptions for entire classes of excavators (e.g., farmers) represent a greater threat to pipeline safety than exemptions for specific excavation activities (e.g., shallow tilling). The result of PHMSA's review of a State's program under criterion 7 will not, by itself, be grounds for deeming enforcement of the State's excavation damage prevention law inadequate.</p> <p>7.b.:</p> <p><i>Scoring guidance for question 7.b.:</i></p> <p><u>2 = Satisfactory</u>; The enforcement authority or supporting organization maintains robust complete information that clearly demonstrates the impact of exemptions. The information shows the number of damages caused by parties or activities that are exempt from State excavation damage prevention requirements.</p> <p>1 = Needs Improvement; The enforcement authority or supporting organization maintains some information that demonstrates the impact of exemptions, but the information is not complete and can only be used in a limited capacity to demonstrate the number of damages caused by parties or activities that are exempt from State excavation damage prevention requirements. 0 = Unsatisfactory; The enforcement authority or supporting organization maintains limited or no information that demonstrates the impact of exemptions.</p> <p>Question weight: 3</p>
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7.d.:

Scoring guidance for question 7.d.:

2 = Satisfactory; The State uses information about the impact of exemptions to improve the excavation damage prevention program on a consistent basis.

1 = Needs Improvement; The State collects some information about the impact of exemptions, but does not actively use the information to improve the excavation damage prevention program. 0 = Unsatisfactory; The State does not collect or use information about the impact of exemptions to improve the excavation damage prevention program. Question weight: 3

General Evaluation Comments:

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STATE EXCAVATION DAMAGE PREVENTION LAW ENFORCEMENT PROGRAM EVALUATION SIGN-IN SHEET

STATE: Maryland

DATE: 11/21/2019

Name	Organization	Title	Email
Jim Barron	MD Underground Facilities D...	Executive Director	jim.barron@mddpa.c susan.stroud@mddp
Susan A. M. Stroud	MD Underground Facilities DPA	Deputy Director	



2019-20 MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY MEMBERS

(Revised 02/07/20)

Joyce P. Brooks <i>Vice Chairman</i> Exp. 9/30/2021	General Public	Self-employed	11470 Duley Station Road Upper Marlboro, MD 20772 jpbrooks@earthlink.net
Walter F. Gainer <i>Treasurer</i> Exp. 09/30/2021	Assoc. Utility Contractors of Maryland	W. F. Wilson & Sons	6586 Meadowridge Rd Elkridge, MD 21075 jlarkins@wfwilson.net
Paul Kwiatkowski Exp. 9/30/2021	MACo	Howard County	603 Oak Tree Road Westminister, MD 21157
Derek Shreves Exp. 9/30/2020	Maryland Municipal League	Town of Sykesville Public Works	7003 Beachmont Drive Sykesville, MD 21784 dshreves@sykeville.net
Michael J. Jewell Exp. 9/30/2020	Underground Facility Owner	Columbia Gas	107 Gabriel Court Smithsburg, MD 21783 mjewell@nisource.com
Tamara Neal Exp. 9/30/2021	Underground Facilities Owner	Washington Gas	5619 Regency Lane Capitol Heights, MD 20747 nealtamara@gmail.com
Erik L. Philips <i>Chairman</i> Exp. 9/30/2021	Underground Utility Locator	Utiliquet	8281 Bodkin Avenue Pasadena, MD 21122 Erik.phillips@utiliquet.com
Kellyn H. Ruddo <i>Secretary</i> Exp. 9/30/2020	One Call Centers	One Call Concepts, Inc.	13109 Fox path Lane West Friendship, MD 21794 KRuddo@managetickets.com
Amber D. Brengel Exp. 9/30/2021	Public Works Contractors Association	Beltsville Construction Supply	11525 Edmonston Road Beltsville, MD 20705 Amber@beltsvillesupply.com

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2020 Authority Meeting Calendar

Miss Utility Conference Center
7223 Parkway Drive,
Hanover, Maryland

Wednesday	January 8 th	Open Session & Closed Executive Session
General Assembly	January 8 th - April 7 th	Annapolis, MD
Wednesday	February 5 th	Meeting Cancelled
Wednesday	March 4 th	Open Session & Closed Executive Session
CGA Conference	March 23 rd - 28 th	Tampa, FL
Wednesday	April 1 st	Open Session & Closed Executive Session
Wednesday	May 6 th	Open Session & Closed Executive Session
Wednesday	June 3 rd	Open Session & Closed Executive Session
MML Conference	June 28 th - 30 th	Ocean City, MD
Wednesday	July	No Meeting Scheduled
Tawes Crab Feast	July 15 th	Crisfield, MD
Wednesday	August 5 th	Open Session & Closed Executive Session
MACo Conference	August 19 th – 22 nd .	Ocean City, MD
Wednesday	September 2 nd	Open Session & Closed Executive Session
Wednesday	October 7 th	Open Session & Closed Executive Session
GCDPC	October 28 th - 30 th	Ocean City, MD
Wednesday	November 4 th	Open Session & Closed Executive Session
Wednesday	December 2 nd	Open Session & Closed Executive Session

ALL OPEN SESSIONS BEGIN AT 9:00 A.M. (Hearings on Probable Violations are held during the open portion of the meetings)

Notes

