

One-Call Update

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What would the CGA 811 Excavation Safety Conference & Expo be without a report on the One-Call laws? It is hard to believe that months have flown by since the 2014 event! The focus for our particular session this year was threefold: First, what has PHMSA (the Pipeline and Hazardous Materials Safety Administration) been doing? Second, what have the states been doing? And finally, what are the major trends?

What has PHMSA been doing?

The Pipeline Inspection, Protection, Enforcement, and Safety (PIPES) Act of 2006 recognized that not all states had/have effective pipeline damage prevention law enforcement programs and required PHMSA to establish review criteria for state programs as a prerequisite should PHMSA find it necessary to conduct an enforcement proceeding against an excavator in the absence of an adequate state enforcement program. States without adequate enforcement may see Federal funding for pipeline safety reduced and must be offered the opportunity to protest an adverse finding by PHMSA. There also has to be a procedure for the alleged offenders to protest any enforcement by PHMSA.

PHMSA has produced a Notice of Proposed Rulemaking (NOPV) (Docket No. PHMSA-2009-0192 – see www.regulations.gov) and it has been stuck in the Federal bureaucracy out of PHMSA's control for quite some time. When (not if) the political obstacles are removed, the NOPV will be published, there will be a public comment period, PHMSA will review the comments, and a final rule will ultimately result. There will almost certainly be a healthy grace period before any state is actually at risk of losing funding. Remember, PHMSA is all about pipeline safety and there is nothing to be gained by withholding much-needed funding from the states. There are fewer than 10 states currently at risk of losing funding and PHMSA is working with all of them to try to secure the necessary legislative support to change the state statutes where necessary. If the fewer than 10 states all "get in line" before the effective date, the whole purpose of the exercise will have been accomplished – every state will have full pipeline damage prevention enforcement for all pipelines (both interstate and intrastate) within their borders.

What have the states been doing?

In 2010, PHMSA enlisted the help of the North American Telecommunications Damage Prevention Council (NTDPC) to survey and summarize state damage prevention laws relative to specific characteristics, such as requirements applicable to excavators and utility operators (see <http://primis.phmsa.dot.gov/comm/DamagePrevention.htm?nocache=6921>). One of the major goals of the co-presenters was to update the summary. Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., a prominent Tulsa law firm, graciously produced copies of the updated summary and passed them out at the March 13, 2014 presentation. Each of the four panelists summarized the changes in their respective assigned states and answered questions from the audience. Hall Estill has copies of the CD. If you are interested, please contact one of us (see *author contact info*).

Hint: Every state is DIFFERENT!! It is very important to know the "Call Before You Dig" statutes wherever you may be digging. Furthermore, it is important that you keep up with the latest versions of not only the statutes but the enabling regulations. Some of the statutes


that were discussed in March have either been enacted or been defeated, or may soon be. You have to pay attention to the rules as much as you have to pay attention while you are digging!!

Major trends

As mentioned earlier, every state is different. That said, there are a few major items that bear mentioning here. First, in many states on or after a certain date, new underground facilities (not just pipelines) must be installed so that they may be located by a generally-accepted electronic locating method, or otherwise locatable or detectable.

Second, if not already true in all states, it will soon be mandatory to report ALL damage to both the underground utility operator and the appropriate state agency and/or the appropriate emergency responders.

Finally, excavators in many states are no longer required to wait IF notified by a Positive Response System that all operators, and all non-member operators, have either marked or have no facilities in the proposed excavation area, and they may proceed with excavation.

The evidence that excavation damage is significantly reduced when you "Call Before You Dig" is overwhelming. To borrow an advertising slogan: JUST DO IT!! 

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**DIRT
FACTS**

Damage Information Reporting Tool

- > General awareness of "Call Before You Dig" by U.S. Region was highest in the Midwest (75%) and lowest in the Northeast (57.8%)
- > Underground excavation damages that were NOT preceded by a locate request: Occupant/Farmer were the most likely not to notify a One-Call center prior to excavation (66%) followed by Unknown (31%), Government (22%), Contractor/Developer (20%) and Utility (12%)
- > Of all events that included facility damages, and for which a locate request was made and the damage root cause was reported as "Locating Practices Not Sufficient", the majority (61%) had visible but incorrect markings, while 30% had markings that were not visible or not made at all.

WANT TO KNOW MORE? THIS INFORMATION WAS EXCERPTED FROM THE 2012 DIRT ANNUAL REPORT. ACCESS THE ENTIRE REPORT AT WWW.CGA-DIRT.COM.