

CHAIRMAN
Martin P. Honigberg

COMMISSIONERS
Robert R. Scott
Kathryn M. Bailey

EXECUTIVE DIRECTOR
Debra A. Howland

STATE OF NEW HAMPSHIRE



PUBLIC UTILITIES COMMISSION
21 S. Fruit St., Suite 10
Concord, N.H. 03301-2429

TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-2431

FAX No. 271-3878

Website:
www.puc.nh.gov

NHPUC 7OCT16AMB:02

October 6, 2016

Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

**Re: DRM 16-508, N.H. Code Admin. Rules Puc 800, Rules for Underground Utility Damage Prevention Program (Dig Safe) - Readoption of Rules with Amendments
Staff Proposed Revision of Puc 805.05(a)(3)**

As indicated during the public comment hearing in this matter held on October 6, 2016, Commission Staff proposes an additional revision to the language of Puc 805.05(a)(3), intended to add greater clarity to the term "immediately" as used in RSA 374:54 Notice of Damage. The proposed change would use language based on that appearing in federal regulations of the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation, at 49 C.F.R. §198.55(a)(6)(iii) (A), regarding the obligation of an excavator who causes damage to a pipeline facility to "report the damage to the operator of the facility at the earliest practical moment following discovery of the damage." A copy of that federal regulation is enclosed with this letter.

The proposed revision is shown below as a marked change to the current text of the rulemaking initial proposal as follows:

Puc 805.05 Damage to an Underground Facility.

(a) When an excavator causes any damage to an underground facility not owned or operated by the excavator, the excavator shall:

- (1) Call 911 when:
 - a. A gas underground facility is damaged and there is a release of gas;
 - b. An electric underground facility is damaged and an excavator determines that a person may have received an electric shock; or
 - c. Any other facility is damaged and public safety is affected.
- (2) Evacuate nearby structures if necessary;
- (3) Contact the facility owner or operator at the earliest practical moment following discovery of the damage;

- (4) Attempt no repairs, unless directed to by the facility owner or operator;
- (5) Call 811 or 888-DIG SAFE (Notification Center); and
- (6) Report the damage within 72 hours excluding weekends and holidays to the commission electronically on Form SNU-0401 dated 12/2014 and available at the commission website at www.puc.nh.gov/forms.

Thank you for your consideration of this proposed additional rules revision.

Sincerely,

A handwritten signature in cursive script that reads "David Wiesner".

David K. Wiesner, Esq.
Staff Attorney

Enclosure
cc: Docket File
Service List

(3) Specific location, starting date, and description of the intended excavation activity.

However, an excavator must be allowed to begin an excavation activity in an emergency but, in doing so, required to notify the operational center at the earliest practicable moment.

(d) The State must determine whether telephonic and other communications to the operational center of a one-call notification system under paragraph (c) of this section are to be toll free or not.

(e) Except with respect to interstate transmission facilities as defined in the pipeline safety laws (49 U.S.C. 60101 *et seq.*), operators of underground pipeline facilities must be required to participate in the one-call notification systems that cover the areas of the State in which those pipeline facilities are located.

(f) Operators of underground pipeline facilities participating in the one-call notification systems must be required to respond in the manner prescribed by §192.614 (c)(4) through (c)(6) of this chapter to notices of intended excavation activity received from the operational center of a one-call notification system.

(g) Persons who operate one-call notification systems or operators of underground pipeline facilities participating or required to participate in the one-call notification systems must be required to notify the public and known excavators in the manner prescribed by §192.614 (b)(1) and (b)(2) of this chapter of the availability and use of one-call notification systems to locate underground pipeline facilities. However, this paragraph does not apply to persons (including operator's master meters) whose primary activity does not include the production, transportation or marketing of gas or hazardous liquids.

(h) Operators of underground pipeline facilities (other than operators of interstate transmission facilities as defined in the pipeline safety laws (49 U.S.C. 60101 *et seq.*), and interstate pipelines as defined in §195.2 of this chapter), excavators and persons who operate one-call notification systems who violate the applicable requirements of this subpart must be subject

to civil penalties and injunctive relief that are substantially the same as are provided under the pipeline safety laws (49 U.S.C. 60101 *et seq.*).

[55 FR 38691, Sept. 20, 1990, as amended by Amdt. 198-2, 61 FR 18518, Apr. 26, 1996; Amdt. 198-6, 60 FR 188, Jan. 5, 2015]

§ 198.39 Qualifications for operation of one-call notification system.

A one-call notification system qualifies to operate under this subpart if it complies with the following:

(a) It is operated by one or more of the following:

(1) A person who operates underground pipeline facilities or other underground facilities.

(2) A private contractor.

(3) A State or local government agency.

(4) A person who is otherwise eligible under State law to operate a one-call notification system.

(b) It receives and records information from excavators about intended excavation activities.

(c) It promptly transmits to the appropriate operators of underground pipeline facilities the information received from excavators about intended excavation activities.

(d) It maintains a record of each notice of intent to engage in an excavation activity for the minimum time set by the State or, in the absence of such time, for the time specified in the applicable State statute of limitations on tort actions.

(e) It tells persons giving notice of an intent to engage in an excavation activity the names of participating operators of underground pipeline facilities to whom the notice will be transmitted.

Subpart D—State Damage Prevention Enforcement Programs

Source: 80 FR 43868, July 23, 2015, unless otherwise noted.

EFFECTIVE DATE NOTE: At 80 FR 43868, July 23, 2015, Subpart D was added, effective Jan. 1, 2018.

§ 198.51 What is the purpose and scope of this subpart?

This subpart establishes standards for effective State damage prevention

enforcement programs and prescribes the administrative procedures available to a State that elects to contest a notice of inadequacy.

§ 198.53 When and how will PHMSA evaluate State damage prevention enforcement programs?

PHMSA conducts annual program evaluations and certification reviews of State pipeline safety programs. PHMSA will also conduct annual reviews of State excavation damage prevention law enforcement programs. PHMSA will use the criteria described in §198.55 as the basis for the enforcement program reviews, utilizing information obtained from any State agency or office with a role in the State's excavation damage prevention law enforcement program. If PHMSA finds a State's enforcement program inadequate, PHMSA may take immediate enforcement against excavators in that State. The State will have five years from the date of the finding to make program improvements that meet PHMSA's criteria for minimum adequacy. A State that fails to establish an adequate enforcement program in accordance with §198.55 within five years of the finding of inadequacy may be subject to reduced grant funding established under 49 U.S.C. 60107. PHMSA will determine the amount of the reduction using the same process it uses to distribute the grant funding; PHMSA will factor the findings from the annual review of the excavation damage prevention enforcement program into the 49 U.S.C. 60107 grant funding distribution to State pipeline safety programs. The amount of the reduction in 49 U.S.C. 60107 grant funding will not exceed four percent (4%) of prior year funding (not cumulative). If a State fails to implement an adequate enforcement program within five years of a finding of inadequacy, the Governor of that State may petition the Administrator of PHMSA, in writing, for a temporary waiver of the penalty, provided the petition includes a clear plan of action and timeline for achieving program adequacy.

§ 198.55 What criteria will PHMSA use in evaluating the effectiveness of State damage prevention enforcement programs?

(a) PHMSA will use the following criteria to evaluate the effectiveness of a State excavation damage prevention enforcement program:

(1) Does the State have the authority to enforce its State excavation damage prevention law using civil penalties and other appropriate sanctions for violations?

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

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

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

(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?

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

(i) 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.

(ii) Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.

(iii) An excavator who causes damage to a pipeline facility:

(A) Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and

(B) If the damage results in the escape of any PHMSA regulated natural and other gas or hazardous liquid, must

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov	
amanda.noonan@puc.nh.gov	john.clifford@puc.nh.gov
anich@bwtc.net	joseph.vercellotti@puc.nh.gov
apkarian@unitil.com	jrichards@fairpoint.com
awalsh@tillotsoncorp.com	jrose@pgane.org
bbauer@continentalpaving.com	Karen.Mackey@eversource.com
bfinelli@digsafe.com	kwante@bwtc.net
carol.burke@eversource.com	leo.cody@libertyutilities.com
chris_hodgdon@cable.comcast.com	leszek.stachow@puc.nh.gov
ciulla@unitil.com	letourneau@unitil.com
cornelissend@nhec.com	mark.naylor@puc.nh.gov
cread@metrocast.com	matthew.fossum@eversource.com
dave_flewellling@cable.comcast.com	melinda.poore@charter.com
david.poplawski@charter.com	michael.sheehan@libertyutilities.com
david.wiesner@puc.nh.gov	nhwwa@worldpath.net
dmarkow@dot.state.nh.us	nostra875@myfairpoint.net
don.johnson@charter.com	ocalitigation@oca.nh.gov
donald.ware@pennichuck.com	palmerw@nhec.com
ducasij@nhec.com	pgendron@concordnh.gov
eperiksen@deluccafence.com	phrice@cityofportsmouth.com
eroberge@concordnh.gov	randy.knepper@puc.nh.gov
gabbott@agcnh.org	robert.meehan@fairpoint.com
gauclair@fairpoint.com	robert.wyatt@puc.nh.gov
hjcabrera@deluccafence.com	scott.brooks@tdstelecom.com
jacqueline.lawrie@puc.nh.gov	Stacey_Parker@cable.comcast.com

Docket #: 16-508-1 Printed: October 06, 2016

FILING INSTRUCTIONS:

a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:

DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429

b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.

c) Serve a written copy on each person on the service list not able to receive electronic mail.

steve.frink@puc.nh.gov

taylorp@unitil.com

tom.frantz@puc.nh.gov

tsylvester@ontargetservices.com

wade@unitil.com

william.ruoff@puc.nh.gov