



July 9, 2012

Docket Operations Facility  
U.S. Department of Transportation  
West Building, Room W12-140  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

VIA ELECTRONIC FILING (<http://www.regulations.gov>)

Re: Docket No. PHMSA–2009–0192  
*Pipeline Safety: Pipeline Damage Prevention Programs,*

Dear Sir or Madam:

The Interstate Natural Gas Association of America (INGAA) submits this comment letter per the Notice of Proposed Rulemaking (NOPR) the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued on March 30, 2012, which appeared in the *Federal Register* on April 1, 2012;<sup>1</sup> and the notice of extension of comment period PHMSA issued on May 23, 2012, which appeared in the *Federal Register* on May 30, 2012.<sup>2</sup> INGAA is a non-profit trade association that represents the interstate natural gas transmission pipeline industry. INGAA's members represent approximately two-thirds of the pipelines and over 65 percent of the mileage comprising the U.S. natural gas transmission pipeline system. The interest of INGAA's members in the matters addressed in the NOPR is self-evident.

INGAA supports the goals behind the NOPR and the regulatory approach embodied in the proposed rules. Damage prevention is a serious subject, and the proposed rules establish an appropriate baseline for state programs and help clarify the damage prevention responsibilities and requirements for all stakeholders.

INGAA looks forward to the promulgation of final rules along the lines proposed in the NOPR. That said, INGAA sees three remaining gaps in the proposed regulatory language:

- Of greatest concern, the proposed regulations do not require excavators to stop work after damaging a pipeline.
- The language requiring excavators to contact their respective one-call systems (collectively, One Call) contains a clause allowing excavators to cite ignorance as grounds for avoiding their pipeline safety responsibilities.
- The proposed One Call exemption for homeowners using hand tools is overbroad given the documented pipeline safety risk associated with this activity.

INGAA explores each of these gaps and recommends changes consistent with the objectives and thrust of the proposed rules.

<sup>1</sup> 77 Fed. Reg. 19800.

<sup>2</sup> *Id.* at 31827.

**I. “Stop work” provisions are indispensable to damage prevention and must be included in these regulations.**

Under proposed section 196.107, when a pipeline is damaged by an excavation activity the excavator would have to report the damage to the pipeline operator at the earliest practicable moment after the damage occurs.<sup>3</sup> Similarly, under proposed section 196.109, when damage caused by an excavation activity causes a release, the excavator would be required to contact 911.<sup>4</sup> The proposed requirements are fine as far as they go, but a critical element — stopping work — is missing.

The need to address this point cannot be overstated: **If a pipeline is damaged in any way by excavation activity, whether the damage causes a release or not, the excavator must immediately stop work at that location and not resume work in the area until the pipeline operator determines it is safe to do so.**

Excavators are not qualified to determine extent of pipeline damage and the dangers such damage may entail. A “stop work” provision is therefore indispensable to an effective set of damage prevention regulations. PHMSA should — and, in all candor, must — expand section 196.107 to impose a stop work requirement and specify when work may be resumed. The required prohibition can be inserted by amending the proposed text as follows (additions in bold, deletions indicated by strikeout):

§ 196.107 \* \* \*

If a pipeline is damaged in any way by excavation activity, the excavator must **immediately stop work at that location and** report such damage to the pipeline operator, whether or not a leak occurs, ~~at the earliest practicable moment following discovery of the damage.~~ **Work stopped under this section may not resume until the pipeline operator determines it is safe to do so.**

A stop work provision should also be added to proposed section 196.109.

In addition, proposed section 196.109 contains language that would have excavators making assessments about the material being released and the threat the release poses to people and property. Pipeline operators are qualified to make these assessments, excavators are not, and the phrases calling of excavator assessments therefore should be deleted. Inserting the stop work requirement and deleting excavator assessment is achieved by amending the proposed text as follows (additions in bold, deletions indicated by strikeout):

§ 196.109 \* \* \*

If damage to a pipeline from excavation activity causes the release of any ~~flammable, toxic, or corrosive~~ **material, either** gas or liquid, from the pipeline ~~that may endanger life or cause serious bodily harm or damage to property or the~~

<sup>3</sup> *Id.* at 19833 (text of proposed 49 C.F.R. § 196.107).

<sup>4</sup> *Id.* at 19833 (text of proposed 49 C.F.R. § 196.109).

~~environment~~, the excavator must immediately **stop work at that location and** report the release ~~of hazardous products~~ to appropriate emergency response authorities by calling 911. Upon calling the 911 emergency telephone number, the excavator may exercise discretion as to whether to request emergency response personnel be dispatched to the damage site. **Work stopped under this section may not resume until the pipeline operator determines it is safe to do so.**

Finally, the insertion of stop work provisions and the related removal of excavator assessment language must be carried into the minimum criteria PHMSA will be using to evaluate the effectiveness of state damage prevention enforcement programs. This can be accomplished by amending the text of proposed subparagraph 198.55(a)(6)<sup>5</sup> and adding a subparagraph 198.55(a)(6)d as follows (additions in bold, deletions indicated by strikeout):

§ 198.55 \* \* \*

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

\* \* \*

(6) At a minimum, does the state's excavation damage prevention law require the following:

\* \* \*

c. An excavator who causes damage to a pipeline facility:

i. Must **immediately stop work at that location and** report the damage to the owner or operator of the facility ~~at the earliest practical moment following discovery of the damage~~; and

ii. If the damage results in the escape of any ~~flammable, toxic, or corrosive material~~, gas or liquid, must **immediately stop work at that location and** promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.

**d. Work stopped under subparagraph c may not resume until the pipeline operator determines it is safe to do so.**

## II. **Proposed section 196.103 should be amended to foreclose ignorance as an excuse for not contacting One Call.**

Proposed section 196.103 requires excavators to use an available one-call system “[p]rior to commencing excavation activity *where an underground gas or hazardous liquid pipeline may be present.*”<sup>6</sup> While INGAA appreciates PHMSA’s jurisdiction extends to natural gas and hazardous liquid pipelines, the italicized language prejudices the very question contacting One Call is supposed to answer: Are pipelines present?

<sup>5</sup> *Id.* at 19834 (text of proposed 49 C.F.R. § 198.55(a)(6)c).

<sup>6</sup> *Id.* at 19833 (text of proposed 49 C.F.R. § 196.103) (emphasis supplied).

The italicized language would allow an excavator to avoid contacting One Call out of claimed ignorance: “I did not contact One Call because I did not know pipelines might be present.” Such claims, easily made in the aftermath of an incident, represent the type of behavior damage prevention requirements are supposed to prohibit.

There are two ways to foreclose ignorance as an excuse: strike the italicized language or premise the language on the assumption that pipelines “may be present” anywhere, which makes the italicized language superfluous. The far better course is to strike the italicize language and INGAA urges PHMSA to do so.

### **III. Homeowners using hand tools to dig more than 12 inches deep should not be exempt from contacting One Call.**

According to data recently collected by the Common Ground Alliance (CGA) through its Damage Information Reporting Tool (DIRT), the property “occupant” (likely equivalent to “homeowner”) is responsible for 8 – 10% of reported damage, and 15 -20% of damage is caused by hand tools. These numbers are too large to warrant categorically excluding homeowners from contacting One Call.

INGAA therefore opposes proposed section 196.105,<sup>7</sup> which would exempt homeowners using hand tools from contacting One Call before digging. INGAA also opposes the last sentence of the proposed definition of “excavation,” which excludes “homeowners excavating on their own property with hand tools.”<sup>8</sup>

INGAA respects the considerations that motivated the homeowner exclusion. Planting petunias likely does not pose a significant pipeline safety threat, and there is no benefit spending One Call’s limited resources on calls from weekend gardeners and diverting limited resources. INGAA therefore recommends limiting the homeowner exemption to homeowners or occupants using only hand tools, rather than mechanized excavating equipment (including power augers), on their own property and digging no deeper than 12 inches below natural grade. Put differently, “call before you dig” would be required wherever any powered excavating equipment is used or the homeowner or occupant is digging deeper than 12 inches.

An appropriate accommodation of homeowners and occupants can be accomplished by amending proposed section 196.105 and striking the last sentence of the proposed definition of “excavation” INGAA supports amending section 196.105 as follows (additions in bold, deletions indicated by strikeout):

§ 196.105 \* \* \*

Homeowners **or occupants** using only hand tools, rather than mechanized excavating equipment (**including power augers**), on their own property **and**

<sup>7</sup> *Id.* at 19833 (text of proposed 49 C.F.R. § 196.105).

<sup>8</sup> *Id.* at 19832 (text of proposed 49 C.F.R. § 196.3). Because “excavation” is incorporated into the proposed definition of “excavator,” *id.*, the exclusion relieves homeowners using hand tools from any of the requirements and responsibilities referenced in the proposed regulations.

**digging no deeper than 12 inches below natural grade** are not required to use a one-call prior to digging. **Timely one-call notification is required for any use of powered excavating equipment or any digging deeper than 12 inches.**

Limiting the homeowner exemption as recommended should help prevent at least some of the damage experienced over the past few years without placing an undue burden or unrealistic expectation on homeowners or occupants.

INGAA also urges deletion of the last sentence of the proposed definition of “excavation,” which would exclude “homeowners excavating on their own property with hand tools.”<sup>9</sup> Removing this sentence appropriately recognizes the risks posed by homeowner excavation. In addition, removing this sentence results in a regulatory definition that builds on the successes already achieved by CGA. CGA’s Best Practices are promoted heavily by both pipeline operators and PHMSA. In fact, PHMSA has often recommended or required operators to use them. As a result of these efforts, many excavators are already familiar with CGA’s definitions.

Carrying CGA’s language into PHMSA’s regulations promotes a consistent understanding throughout the damage prevention community and avoids counterproductive conflicts and confusion. CGA’s definitions do not exclude homeowners and neither should the definitions used in PHMSA’s damage prevention regulations.

### **Conclusion**

INGAA offers its three changes to the proposed regulations in the interest of safety: the safety of excavators; the safety of homeowners and occupants; and the safety of those who live, work or merely pass by the site of an excavation. INGAA appreciates and endorses PHMSA’s efforts in damage prevention both generally and especially in ensuring that state damage prevention enforcement programs are adequate and effective. INGAA stands ready to offer any assistance that may be required to move these regulations forward expeditiously.

Respectfully submitted,

/s/

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<sup>9</sup> *Id.* at 19832 (text of proposed 49 C.F.R. § 196.3). Because “excavation” is incorporated into the proposed definition of “excavator,” *id.*, the exclusion relieves homeowners using hand tools from any of the requirements and responsibilities referenced in the proposed regulations.