Dustin Johnson, Chair
Steve Kolbeck, Vice Chair
Gary Hanson, Commissioner

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
www.puc.sd.gov

Capitol Office
(605) 773-3201
1-866-757-6031 fax

Warehouse
(605) 773-5280
(605) 773-3225 fax

Consumer Hotline
1-800-332-1782

June 3, 2010

Patricia Van Gerpen
SD Public Utilities Commission
500 E. Capitol Ave
Pierre, SD 57501

Re: New Docket – Pipeline Safety

Dear Ms. Van Gerpen:

Prevention of damage to pipelines from excavation is a shared effort. It is important both to the regulating entities and operators. Specifically, the PUC's pipeline safety staff must determine, through its inspections, whether jurisdictional operators are taking proper measures to promote safety. Our state program must do so according to the Pipeline & Hazardous Materials Safety Administration (PHMSA) rules and regulations.

Despite pipeline operator efforts, excavation damage remains the number one cause of serious pipeline incidents. As a result, PHMSA's damage prevention work this past year included an assessment of each state's efforts to reduce excavation related damages. PHMSA surveyed state damage prevention programs based on nine elements cited by Congress in the PIPES Act of 2006. Those nine elements are considered to be best practices in damage prevention. Through the use of the survey, PHMSA determined whether each state incorporated those nine elements in the state's damage prevention program. Total state incorporation is PHMSA's ultimate goal.

The survey results show South Dakota is deficient in three particular areas: (i) Employee Training (Participation by operators, excavators and other stakeholders in the development and implementation of effective employee training programs to ensure that operators, the one call center, the enforcing agency and the excavators have partnered to design and implement training for the employees of operators, excavators, and locators.); (ii) Public Education (A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities.); and (iii) Data Analysis (Efforts are being made to continually improve program effectiveness.).

The list of the nine PHMSA elements and a state-by-state comparison highlighting South Dakota is attached for your reference. You will see partial green circles for elements 4 and 9 and a partial red circle for element 5 in South Dakota's survey results. The red mark on element 5 signifies an element in need of improvement. The partial green marks on elements 4 and 9 signify elements not fully developed and needing improvement.

Also attached is the list of questions used in PHMSA's analysis and determination of state comparison charts. The questions note areas where South Dakota's damage prevention programs are not functioning up to PHMSA's standards and goals. The questions have been prioritized by pipeline safety staff.

It is important to include all stakeholders in an investigation of the deficient elements to determine whether and specifically what implementation could benefit South Dakota and the safety of our consumers. We anticipate various stakeholders with an interest are not regulated entities, thus are not familiar with our process and likely would not allocate the resources to fully participate. Therefore, this exercise needs to be designed in such a way to allow data collection from all stakeholder groups. The pipeline safety department has access to $28,000 in federal funds to assist with this process. Experts in data collection as well as damage prevention are available to provide the best recommendations possible. As such, pipeline safety staff proposes use of the federal funds to execute the following plan.

Step One:	Identify stakeholders.
Step Two:	Determine best method of communication with stakeholders to properly assess areas of necessary damage prevention improvement relative to the PHMSA's initiative.
Step Three:	Collect information as justification for or against change.
Step Four:	Analyze data and present recommendations.
Step Five:	Arrive at a Commission decision by November 1, 2010.

Pipeline safety staff recognizes our state is unique in many ways such as sparse population. Our unique characteristics may make implementation of all nine PHMSA elements impractical, unnecessary or not cost effective. However, our partnership with PHMSA requires we engage in a process to fully vet all issues, create a proper record, and obtain a Commission decision regarding implementation. At this time, such a record does not exist and these elements have not been analyzed in enough detail to allow staff to make an assessment.

Pipeline safety staff respectfully requests the Commission find: (i) It is necessary to investigate the three elements cited by Congress in the 2006 PIPES Act where PHMSA found the state's damage prevention programs deficient; (ii) The Executive Director has authority to contract with an expert in this field to aid in the investigation; and (iii) A report and recommendations should be produced for Commission review.

Sincerely,

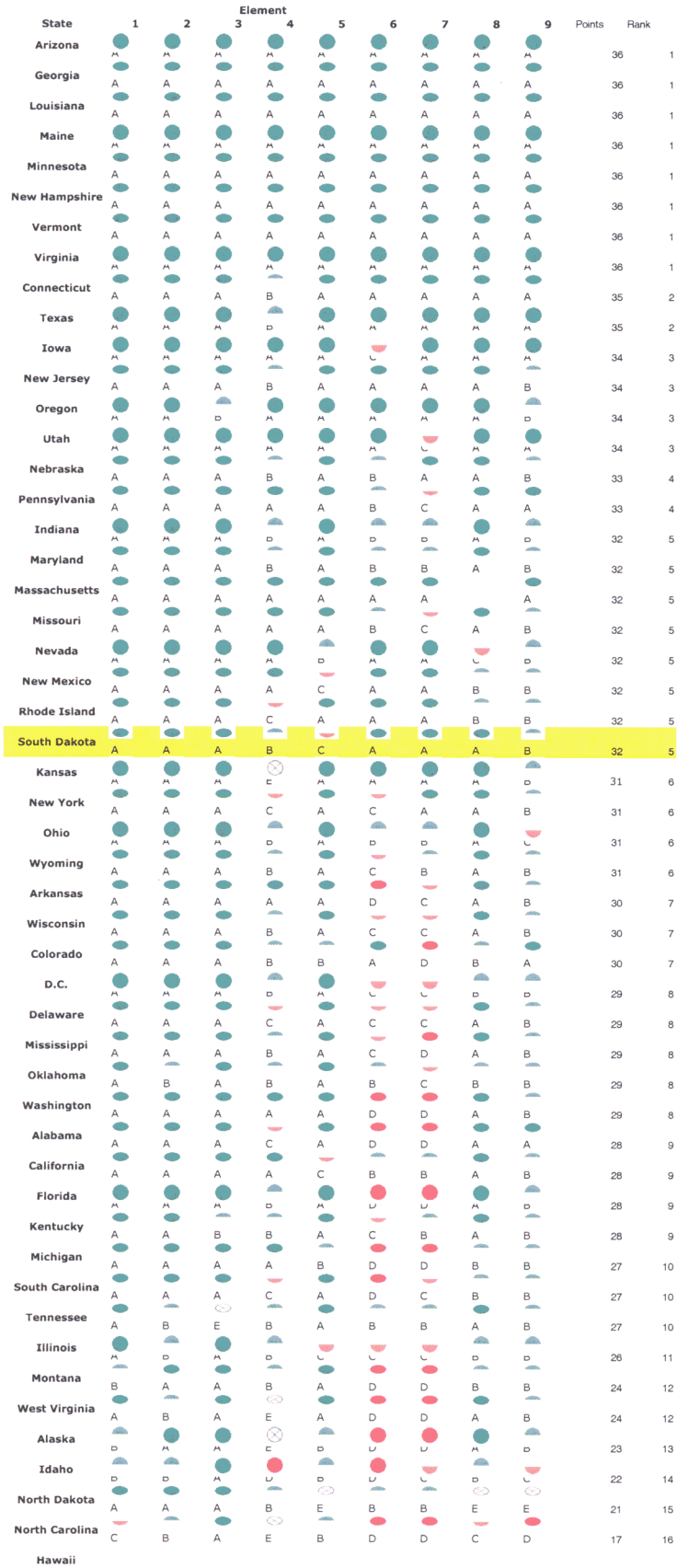
Kara Semmler
Staff Attorney

Nine Elements of Effective DP Programs

1. Effective communication between operators and
excavators from excavation notification to completion
of excavation
2. Fostering support and partnership of all stakeholders
3. Operators' use of performance measures for locators
4. Partnership in employee training
5. Partnership in public education
6. A dispute resolution process that defines the enforcement agency as a partner and facilitator
7. Fair and consistent enforcement of the law
8. Use of technology to improve the locating process
9. Data analysis to continually improve program effectiveness

Damage Prevention Measures for Implementation Consideration in SD

Element	Damage Prevention Measure	Priority (1-Highest, 4 – Lowest)
5	The state damage prevention education program establishes strategic relationships in an effort to leverage common resources. These relationships are established between governmental agencies, emergency responders, associations of all types, media outlets, grass roots organizations, and others and involve partnering to further damage prevention education efforts. (CGA Best Practices v. 6.0, Best Practice 8-8)	1
5	The state damage prevention education program includes a comprehensive, strategic marketing/advertising plan that focuses on setting realistic goals and allocating sufficient resources required to achieve these goals within specified timeframes. (CGA Best Practices v. 6.0, Best Practice 8-1)	1
5	Damage prevention stakeholders, including facility owners/operators, locators, excavators, government representatives, and others use field representatives to provide education anytime and anywhere it is needed. (NAPSR)	1
5	The state damage prevention education program includes identification of target audiences and their individual needs. (CGA Best Practices v. 6.0, Best Practice 8-2)	1
5	The one call center has a documented, proactive public awareness, education and damage prevention program. (CGA Best Practices v. 6.0, Best Practice 3-1)	1
4	A multi-stakeholder training committee or equivalent has been established, with participation by the one call center, facility owners/operators, the state enforcement agency, excavators, locators, and other interested stakeholders. Input from the committee is factored into the identification of training needs and the development and implementation of employee training programs for operators, excavators and locators. Damage prevention program training needs are systematically and periodically identified. (NAPSR; PHMSA)	2
4	For all stakeholders, Employee training programs and needs are tailored to available data trends relative to performance, complaints, near misses or damage incidents and, if necessary, in response to specific incidents. (PHMSA)	2
4	A training calendar is maintained and training is scheduled in support of the needs of stakeholders. (NAPSR)	2
4	Training records for individuals are maintained. (PHMSA)	2
9	The reported damages data is used to assess and improve underground damage prevention efforts. (CGA Best Practices v. 6.0, Best Practice 9-16)	2
9	Results of damage reports are quantified against a standardized risk factor. The risk factor considers a stakeholder's exposure to potential damage. This risk factor may be based on factors such as the number of miles of line installed or the number of one call center notification tickets. For example, a risk factor may compare how many underground damages occurred in a certain time period versus the total number of notification tickets issued. (CGA Best Practices v. 6.0, Best Practice 9-20)	2
9	Performance levels and trends are assessed against other organizations. (CGA Best Practices v. 6.0, Best Practice 9-21)	2
9	The reported damages data (in whole or summarized) is made available to the public. (PHMSA)	2
1	A uniform color code and set of marking symbols is adopted. (CGA Best Practices v. 6.0, Best Practice 4-3)	3
1	The excavator notifies the facility owner/operator directly or through the one call center if an underground facility is not found where one has been marked or if an unmarked underground facility is found. (CGA Best Practices v. 6.0, Best Practice 5-21)	3
1	An excavator discovering or causing damage to underground facilities notifies the facility owner/operator and the one call center. All breaks, leaks, nicks, dents, gouges, grooves, or other damages to facility lines, conduits, coatings, or cathodic protection are reported. CGA Best Practices v 6.0 # 5-24	3
1	In the event of a damage that results in the escape of any flammable, toxic, or corrosive gas or liquid or endangers life, health or property, the excavator responsible for the damage immediately notifies 911 and the facility owner/operator. (CGA Best Practices v. 6.0, Best Practice 5-25; 49 USC section	3
3	Pipeline operators include performance measures in facility locating services contracts with corresponding and meaningful incentives and penalties. (NAPSR)	3
7	Anytime a pipeline damage occurs, the enforcement authority (if one exists) performs a proper investigation. This is to determine not only the responsible party but also the root cause of the damage. CGA Best Practic v 6.0, # 4-16	3
7	The enforcement authority (if one exists) uses incentives, such as performance and education credits, to encourage compliance by stakeholders. (NAPSR)	3
8	Implementation of technology among stakeholders is generally tailored to data trends relative to performance, complaints, near misses or damage incidents and, if necessary, in response to specific incidents. (PHMSA)	3
8	Effective training accompanies the implementation of new technologies. (PHMSA)	3


Element
State
1
2
3
4
5
6
7
8
9
Points
Rank
Arizona
Georgia
Louisiana
Maine
Minnesota
New Hampshire
Vermont
Virginia
Connecticut
Texas
Iowa
New Jersey
Oregon
Utah
Nebraska
Pennsylvania
Indiana
Maryland
Massachusetts
Missouri
Nevada
New Mexico
Rhode Island
South Dakota
Kansas
New York
Ohio
Wyoming
Arkansas
Wisconsin
Colorado
D.C.
Delaware
Mississippi
Oklahoma
Washington
Alabama
California
Florida
Kentucky
Michigan
South Carolina
Tennessee
Illinois
Montana
West Virginia
Alaska
Idaho
North Dakota
North Carolina
Hawaii