



Excavation Damage Prevention:

“The Benefits of Effective Enforcement”

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Virtual ND/SD Pipeline Safety Operator Conference
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Agenda – Discussion Topics

1. The Role of Enforcement in Damage Prevention
2. PHMSA's expectations regarding enforcement of One-Call laws
 - Adequacy Evaluations
3. ND/SD – Damage Data, Trends and comparisons
4. Opportunities



Congress established nine elements of effective damage prevention programs in the PIPES Act of 2006

- Two Speak to Enforcement

ENFORCEMENT AGENCIES' ROLE TO HELP RESOLVE ISSUES

Fair and equitable enforcement of the law is crucial to effective stakeholder engagement.



FAIR AND CONSISTENT ENFORCEMENT OF THE LAW

Effective enforcement leads to more effective damage prevention programs.



1. Enhanced communication between operators and excavators.
2. Fostering support and partnership of all stakeholders
3. Operator's use of performance measures for locators.
4. Partnership in employee training.
5. Partnership in public education.
6. Enforcement agencies' role to help resolve issues.
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.



PHMSA – 2015 - Final Rule Amends the Federal Pipeline Safety Regulations

Background

49 USC § 60114 provides the United States Department of Transportation with back stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines **in a state that has failed to adequately enforce its excavation damage prevention or one-call laws.**

- Final Rule July 23, 2015
- Effective January 1, 2016
- Requires annual evaluation



Seven Basic Questions

49 CFR §198.55

1. Does the State have an excavation damage prevention law? (Pass/Fail)
2. Is there someone designated to enforce? (Pass/Fail)
3. (a) Is the State assessing civil penalties and other appropriate sanctions for violations (b) at levels sufficient to deter noncompliance? (Pass/Fail)
4. Is there a reliable mechanism to learn about violations? (Scored)
5. Can the State sufficiently investigate excavation damages, and apply enforcement equitably? (Scored)
6. Does the law prescribe minimum damage prevention requirements (use of 811, safe excavation practices, notification of damages to operator, and 911 if release) (Scored)
7. Does the State appropriately understand, and address, exemptions and/or exclusions from the one-call law. (Scored)



State Determinations of Adequacy

CY 2016

Presently

Adequacy of One-Call Law Enforcement Programs

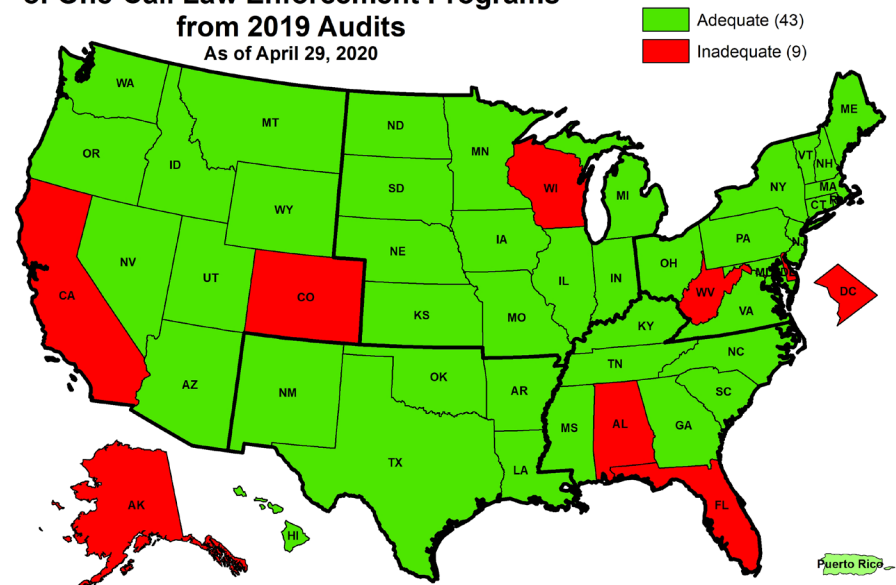
As of June 22, 2017



Map produced June 22, 2017 by the U.S. Department of Transportation (U.S. DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA). Map provided as a reference only. PHMSA makes no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability with respect to this map for any purpose. PHMSA expressly disclaims liability for errors and omissions in the contents of this map.

Determinations of Adequacy of One-Call Law Enforcement Programs from 2019 Audits

As of April 29, 2020

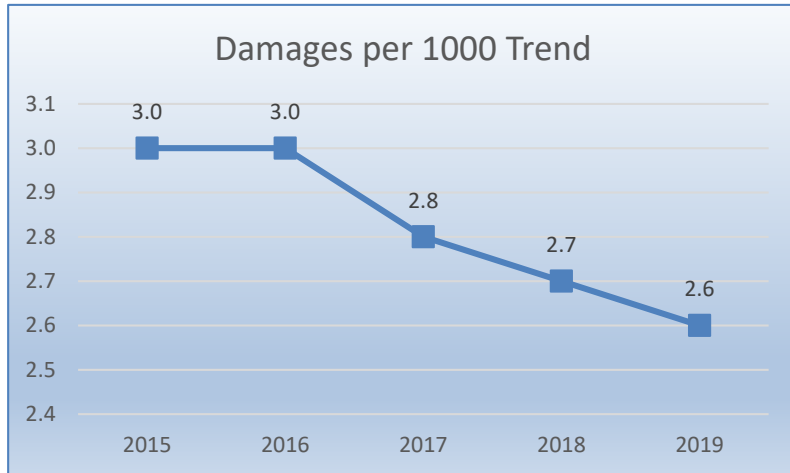


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Performance Snapshot – CY 2015 – 2019

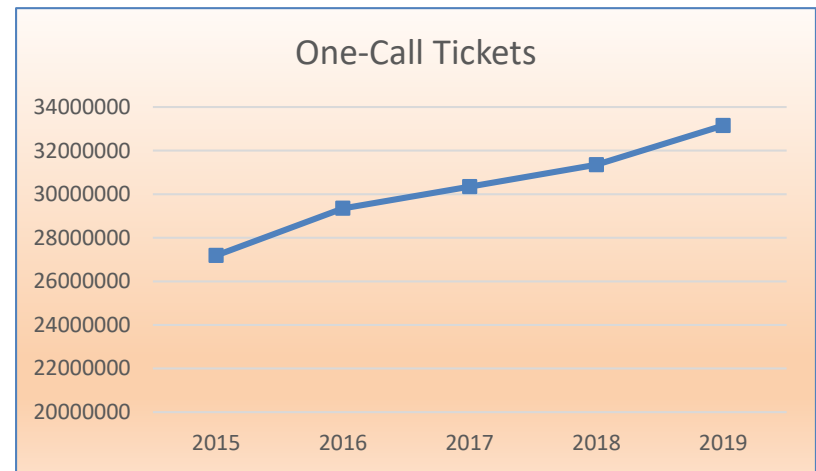
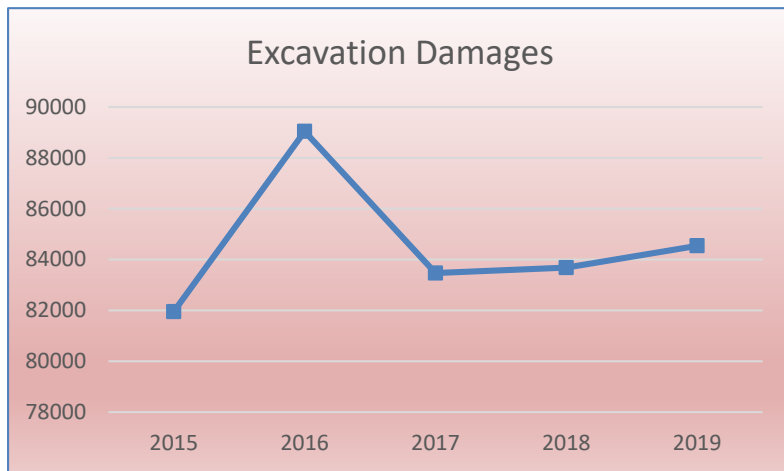
National



National Averages for CY 2019:

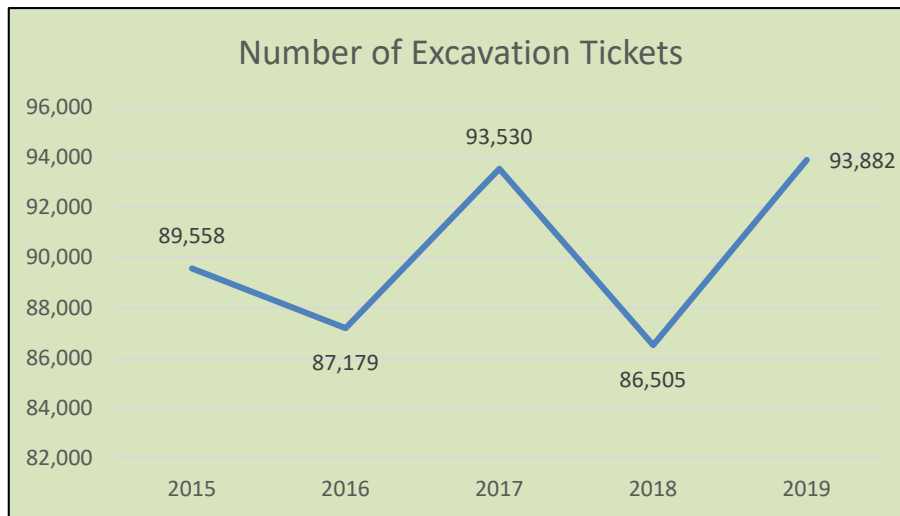
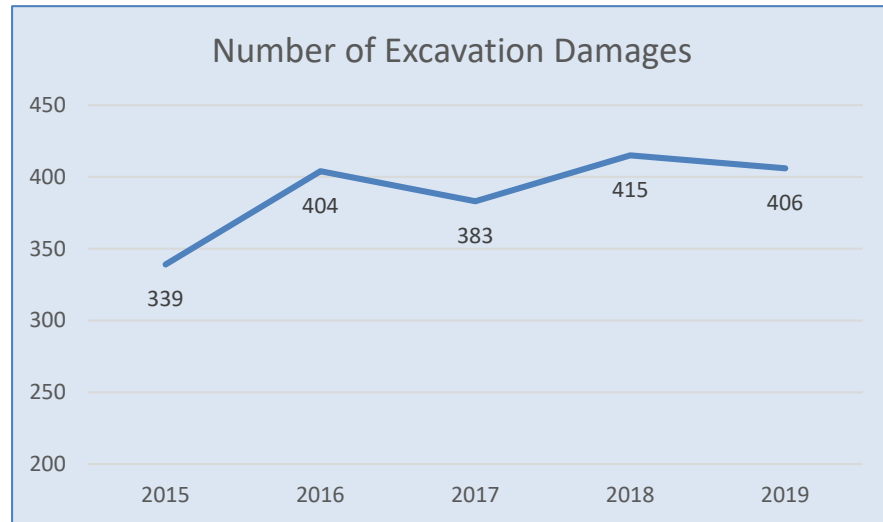
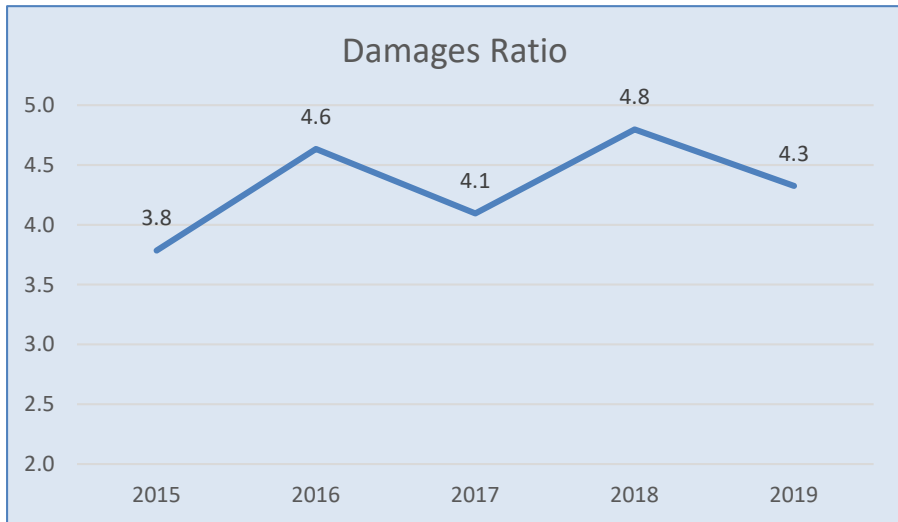
Ratio = **2.6** (down from 2.7)

1. Damages = 84,539 (increase from 83,734)
 - a. One-Call = **32%** (same as last year)
 - b. Locating = **23%** (same as last year)
 - c. Excavating = **39%** (down from 40%)
 - d. Other = **6%** (same as last year)
2. Tickets = 33,165,052



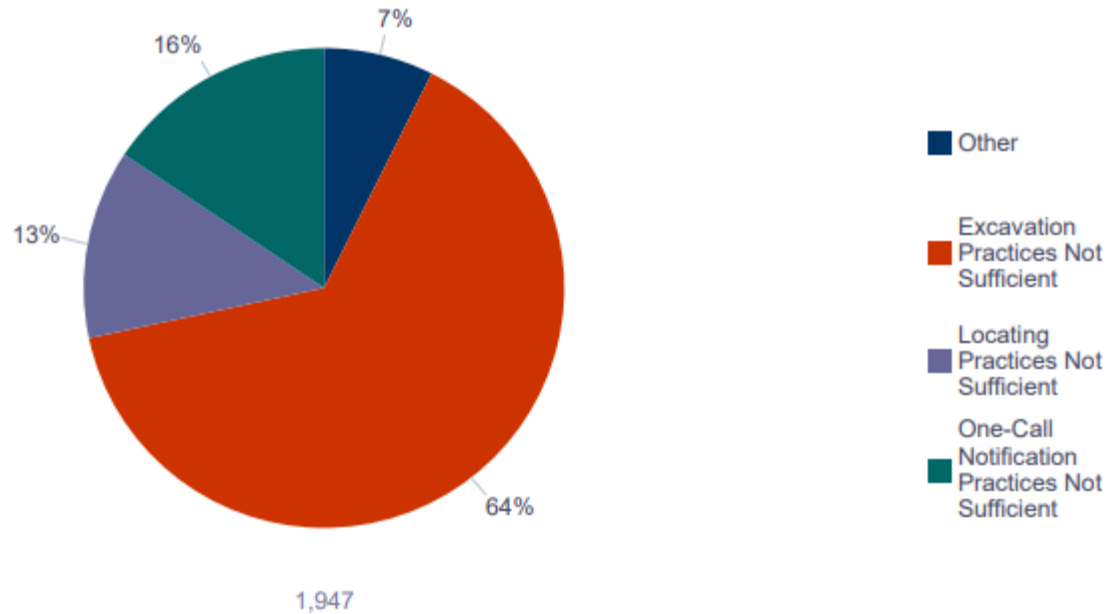
Performance Snapshot – CY 2015-2019

South Dakota



Performance Snapshot – CY 2015-2019

South Dakota

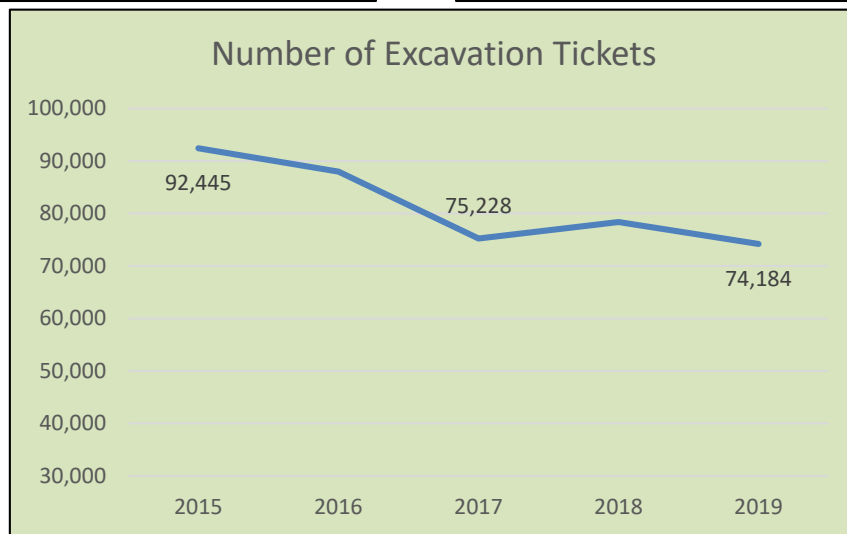
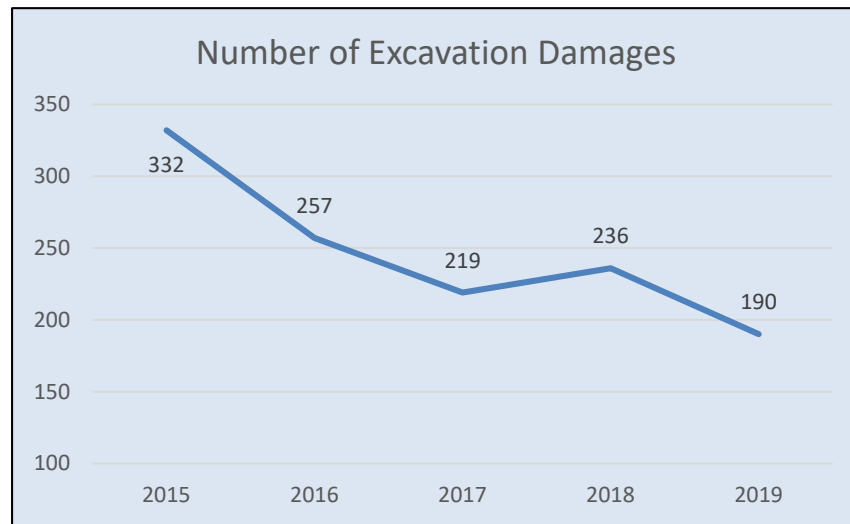
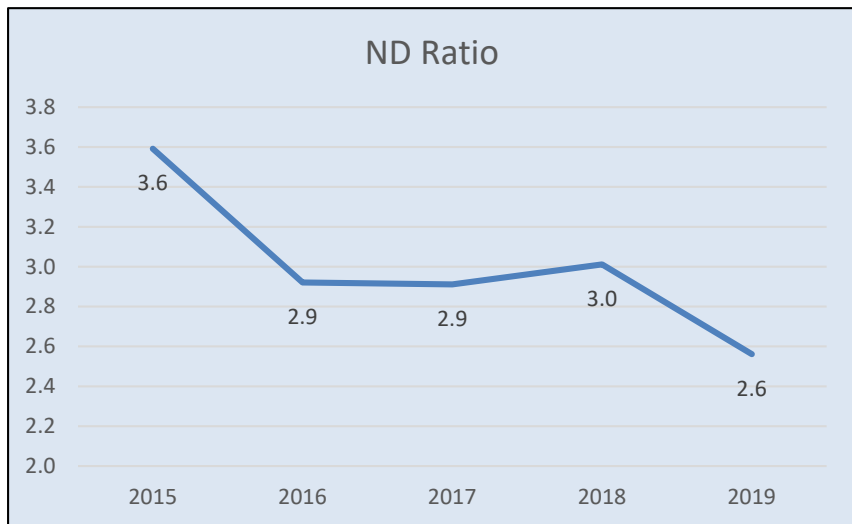


Calendar Year	Number of Excavation Tickets	Number of Excavation Damages	Damages per Thousand Tickets	One-Call Notification Practices Not Sufficient	Locating Practices Not Sufficient	Excavation Practices Not Sufficient	Other	One-Call Notification Practices Not Sufficient	Locating Practices Not Sufficient	Excavation Practices Not Sufficient	Other
2019	93,882	406	4.3	84	48	254	20	21%	12%	63%	5%
2018	86,505	415	4.8	83	48	262	22	20%	12%	63%	5%
2017	93,530	383	4.1	44	45	267	27	11%	12%	70%	7%
2016	87,179	404	4.6	55	49	249	51	14%	12%	62%	13%
2015	89,558	339	3.8	38	58	219	24	11%	17%	65%	7%



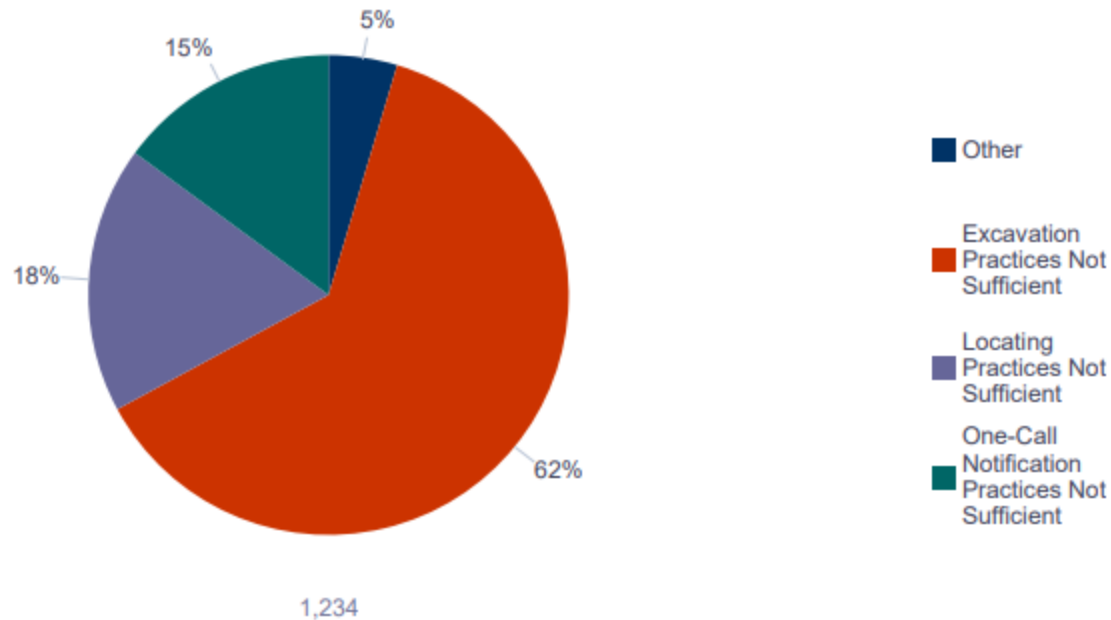
Performance Snapshot – CY 2015-2019

North Dakota



Performance Snapshot – CY 2015-2019

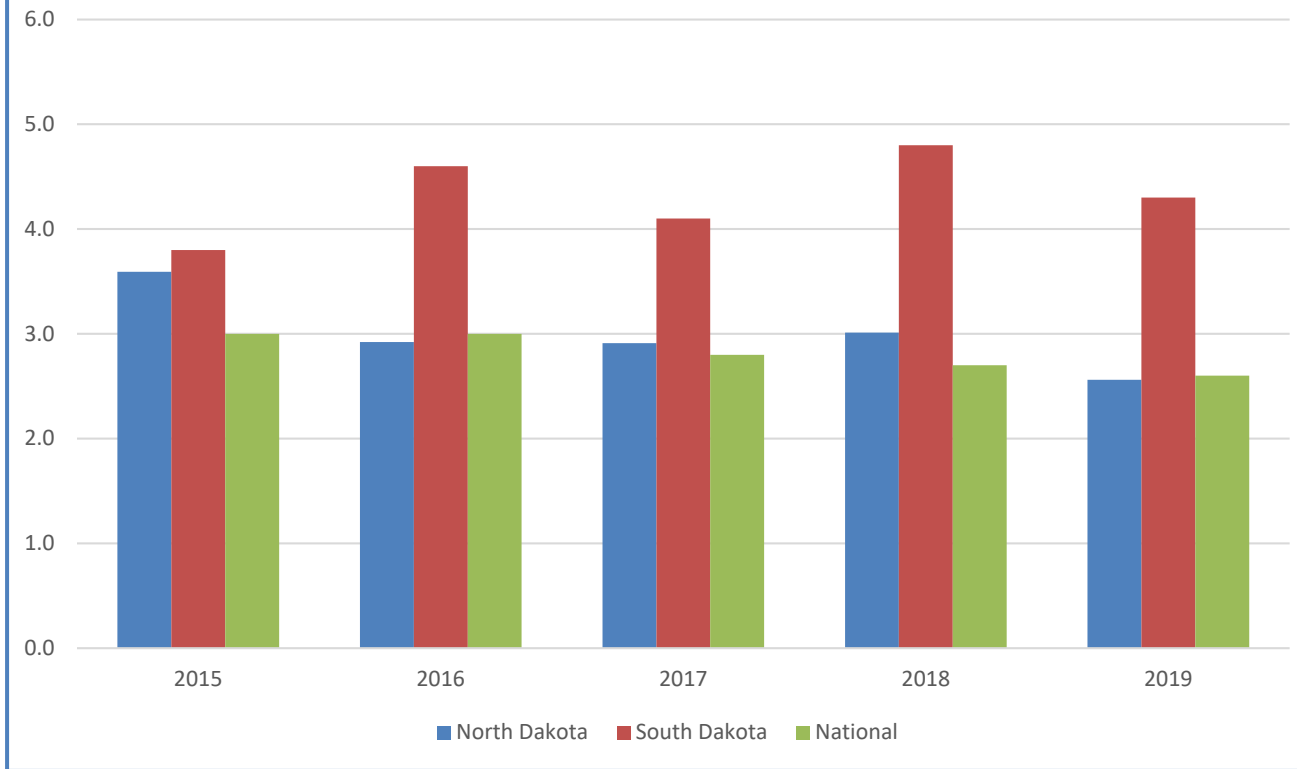
North Dakota



Calendar Year	Number of Excavation Tickets	Number of Excavation Damages	Damages per Thousand Tickets	One-Call Notification Practices Not Sufficient	Locating Practices Not Sufficient	Excavation Practices Not Sufficient	Other	One-Call Notification Practices Not Sufficient	Locating Practices Not Sufficient	Excavation Practices Not Sufficient	Other
2019	74,184	190	2.6	55	46	89	0	29%	24%	47%	0%
2018	78,371	236	3.0	42	47	146	1	18%	20%	62%	0%
2017	75,228	219	2.9	26	31	153	9	12%	14%	70%	4%
2016	87,982	257	2.9	23	34	187	13	9%	13%	73%	5%
2015	92,445	332	3.6	38	64	196	34	11%	19%	59%	10%



Damages per 1000
ND/SD and National



Effective Enforcement Example: Does enforcement have an impact on safety?

CY2016

Total Damages – 2,233
Investigated – 46
Warnings - 46
Referred/Sanctioned – 1
(Contribution in lieu of penalty)
Damage Ratio = **9.0**

CY2017

Total Damages – 1,827
Investigated – 256
Warnings - 256
Referred/Sanctioned – 1
(Court ordered mandatory training)
Damage Ratio = **7.0**

CY2018

Total Damages – 1,786
Investigated – 550
Warnings - 550
Referred/Sanctioned – 1
(Training in lieu of penalty)
Damage Ratio = **6.7**



Is there a nexus between effective enforcement and damage reduction?

Comparison: State A

One-Call Tickets – 369, 081

Damages – 900

Warnings/Training – 34

Penalties - 759

Total Penalty Amount – \$2,432,000

Damage Ratio = 2.4

Comparison: State B

One-Call Tickets – 1,046,686

Damages – 1,010

Warnings/Training – 258

Penalties - 560

Total Penalty Amount – \$561,550

Damage Ratio = 1.0

Comparison: State C

One-Call Tickets – 264,656

Total Damages – 1,786

Warnings/Training – 550

Penalties - 1

Total Penalty Amount – \$0

Damage Ratio = 6.7

Top 10 States by Damage Ratio

Average Damage Ratio = 2.5

Average Number of Penalties = 158

Average Annual Penalty Amount =
\$221,292

Average Warnings/Training – 148



So What Does Effective Enforcement Look Like?

Fair?

Deterrent?

Accountability?

Purpose Driven?

Behavior?

Beneficial?

Safety?

Transparent?

Consistent?

Costs?

Education?

Equitable?

Risks?



“An effective enforcement program should foster stakeholder support in all phases of the damage prevention program.”

Questions?

