

Ohio Underground Damage Prevention Legislative Update

2014 Ohio Traffic Safety & Roadway
Utility Conference & Trade Show

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Rockies Express Pipeline operated by Tallgrass Energy
Partners

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DISCLAIMER

- * Please note that the language discussed today is draft language only
- * Enforcement committee language is available for review at [OUPS.ORG](https://oups.org)

Let's have a Test

- How many “One Calls” are there in Ohio?
 - OUPS...
 - OGPUPS.. Ohio Oil and Gas Producers Underground Protection Service
- How many damage prevention laws are in Ohio?
 - 2 ORC 153.64 ORC 3781.25-32
- What is the difference?
 - One oversees public improvement (153.64)
 - One governs Private Improvement (3781.25-32)

Background

Effects of Legislation Changes



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Background

- 2009-2010 General Assembly- Senate Bill 152 introduced. Many controversies, died in Senate committee.
- * In February 2011, stakeholders came together and developed the Ohio damage prevention coalition.
- * Issues surrounding effective damage prevention legislation were identified and committees were formed to address the best way to incorporate these issues into new law.
- * 2011-2012 General Assembly- Senate Bill 352 and House Bill 458 introduced and assigned to committee.
- * Passed Senate/House December 12, 2012
- * Signed by Governor December 20, 2012
- * Power point available at <http://www.nucaofohio.com/> or jennifer.reams@tallgrassenergyllp.com

Next Step

Background

Established Goals of Legislation Changes

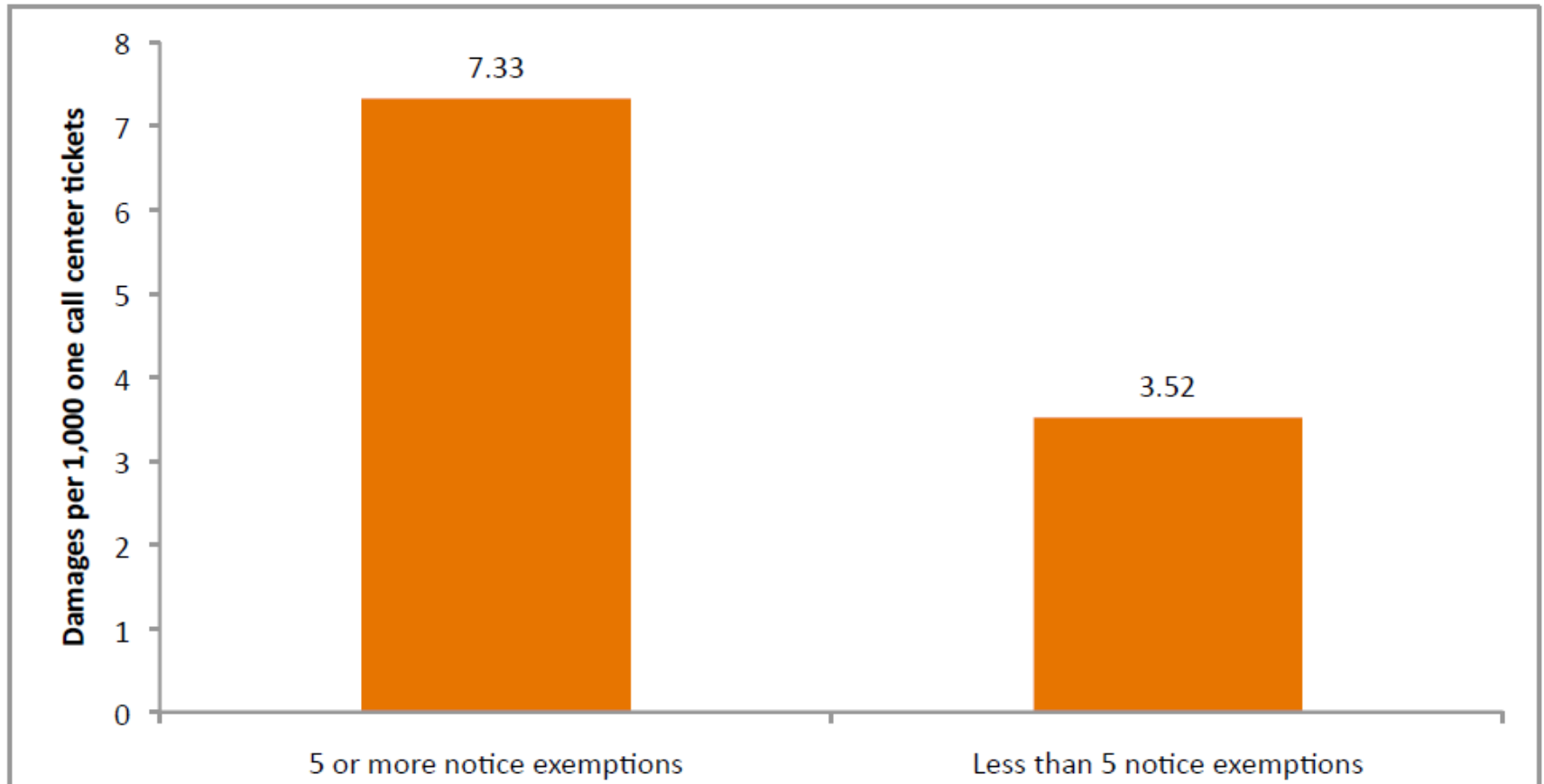
- Decrease Damages
- Improve communication for all stakeholder groups
- Clean up details associated with past issues; (1993-what have we learned?)
- Incorporate up to date available technologies
- Provide clear and concise duties (i.e. eliminate vagueness/confusion)
- Comply with nine elements mandated by Federal Pipes Act of 2006 (safety act of 2002)
- Provide fair and equal enforcement for all violators

What is coming down the Pipe?

- Elimination of exemptions
 - “Every exemption provides another opportunity for a completely preventable serious pipeline incident to occur.”
(Pipeline Safety New Voices Project – **Briefing Paper #7 – *Excavation Damage Prevention***)

Example

Exhibit 24: Average damage rate per 1,000 tickets for states with five or more notice exemptions compared to states with less than five notice exemptions



What is coming down the Pipe?

Defined Limits committee

- * A locate request for the purpose of excavating shall/will be limited to one thousand three hundred and twenty (1,320) linear feet in length or one quarter (1/4) mile in scope.
- * If excavator demonstrates the need for a ticket of larger scope that cannot be segmented into smaller contiguous locate requests the request shall/will be considered a 'Progressive Project Ticket'.

What's is coming down the Pipe?

- A ticket will be valid for 30 calendar days from the date and time of notification to the One Call center as indicated on a the original locate request as long as the original markings are visible and continue to clearly identify the location and direction of underground facilities. If the original markings are not visible and clear, then the ticket will be considered no longer valid even if the 30 days has not expired.
- For the purpose of continuing an excavation beyond the 30 calendar day life of ticket, an excavator will be required the contact the One Call center requesting a new locate request with proper notification per section 3781.28(A) of the ORC
- Proposal to change '10 working days' to '15 working days' for Design Ticket
- “The utility shall make this notification within 15 working days of receiving a notice under division (B) of this section or by a later date acceptable to the developer or designer and utility.”

What is coming down the Pipe?

- * Routine Notification (Ticket) – A notice of intent to excavate that meets conditions as specified in section 3781.28(A) of the ORC
- * Emergency Notification (Ticket) – A notice of intent to excavate that meets conditions as specified in section 3781.25(V) of the ORC
- * Design Notification (Ticket) – A notice of intent to excavate that meets conditions as specified in section 3781.27 of the ORC

Once again-Full language available at: OUPS.org

What is coming down the Pipe?

Enforcement

- Provide fair and equal enforcement for all violators
- The most effective damage prevention tool
- Pipeline and Hazardous Materials Safety Administration (PHMSA) NPRM 2012 3 states decrease of incidents of at LEAST 63% once enforcement was initiated

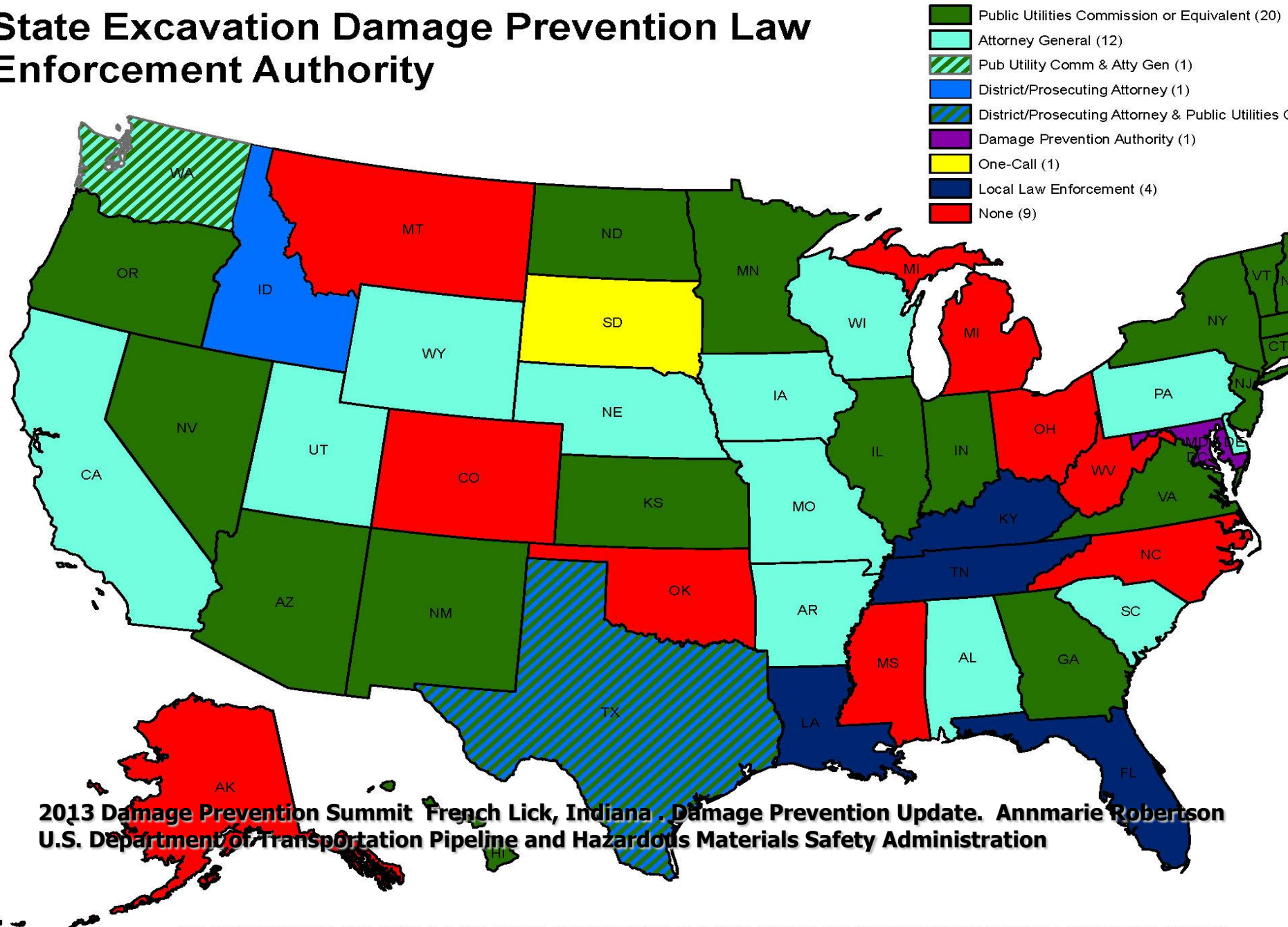
What is coming down the Pipe?

- **Draft language (S) have been submitted to Senator Bill Coley and Representative Robert Sprague**
- 1. Language developed by the Ohio Underground Damage Prevention Coalition Legislative Enforcement Committee
 - Transmission- natural gas & hazardous Liquids, distribution gas, contractors, electric, cable, telecom, locators, Public Utilities Commission of Ohio, designers, municipalities, Ohio one call (OUPS), Ohio Gas Association (OGA), Ohio Oil and Gas Association (OOGA).
- 2. “Straw man” language- developed by another group outside of the committee process
- 3. North Carolina’s damage prevention law

What is coming down the Pipe?

- Who is the enforcement agent?
- 3 choices :
 - Department of Commerce
 - Ohio Department of Natural Resources (ODNR)
 - Public Utilities Commission (PUCO)
- *The Commission may promulgate rules necessary and appropriate to:*
- *A series of boundaries*

State Excavation Damage Prevention Law Enforcement Authority



2013 Damage Prevention Summit French Lick, Indiana . Damage Prevention Update. Annmarie Robertson
U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration

Grey Areas

- * Grey areas are in place for reason
 - * Situational specific
 - * Not cookie cutter rule
 - * Examples: Prudent Excavation
- * Underground Technical Committee (UTC)
- * Industry Experts in place to help determine cases that would require first-hand knowledge of issues that could have caused a violation that was not due to lack of fulfilment of obligation. (In turn, not a direct violation)

Grey Areas

- * (3) Establish guidelines for consistent application of penalties, non-monetary penalties, and corrective action plans under Section 3781.36 in concurrence with the Underground Technical Committee.
- * (4) Establish a procedure to investigate the validity of the complaint using information provided by, but not limited to, the complaint reporting system in accordance with the Underground Technical Committee.

Underground Technical Committee

- * The Underground Technical Committee shall consist of 13 representative and 13 alternates of each of the following industry stakeholder groups:
- * (3) member from the petroleum and natural gas industry
- * Design Engineer
- * Municipality
- * Electricity
- * Cable
- * Telephone
- * Professional Locators
- * 4 commercial excavators.
- * (80%) vote 4/5 majority to reach agreement

Underground Technical Committee

- * Industry representatives serving on the Ohio Underground Damage Prevention Councils that are registered with the Ohio Utilities Protection service as of January 1, 2014 shall establish a nominating council to develop a submission list of technically qualified individuals to the Commission in accordance with 3781.34 (B) (6). The nominating council shall:
 - * 1. Attempt to have equal representation of industry stakeholders on nominating council.
 - * 2. Develop a list of qualifications for applicants to the Underground Technical Committee.

Underground Technical Committee

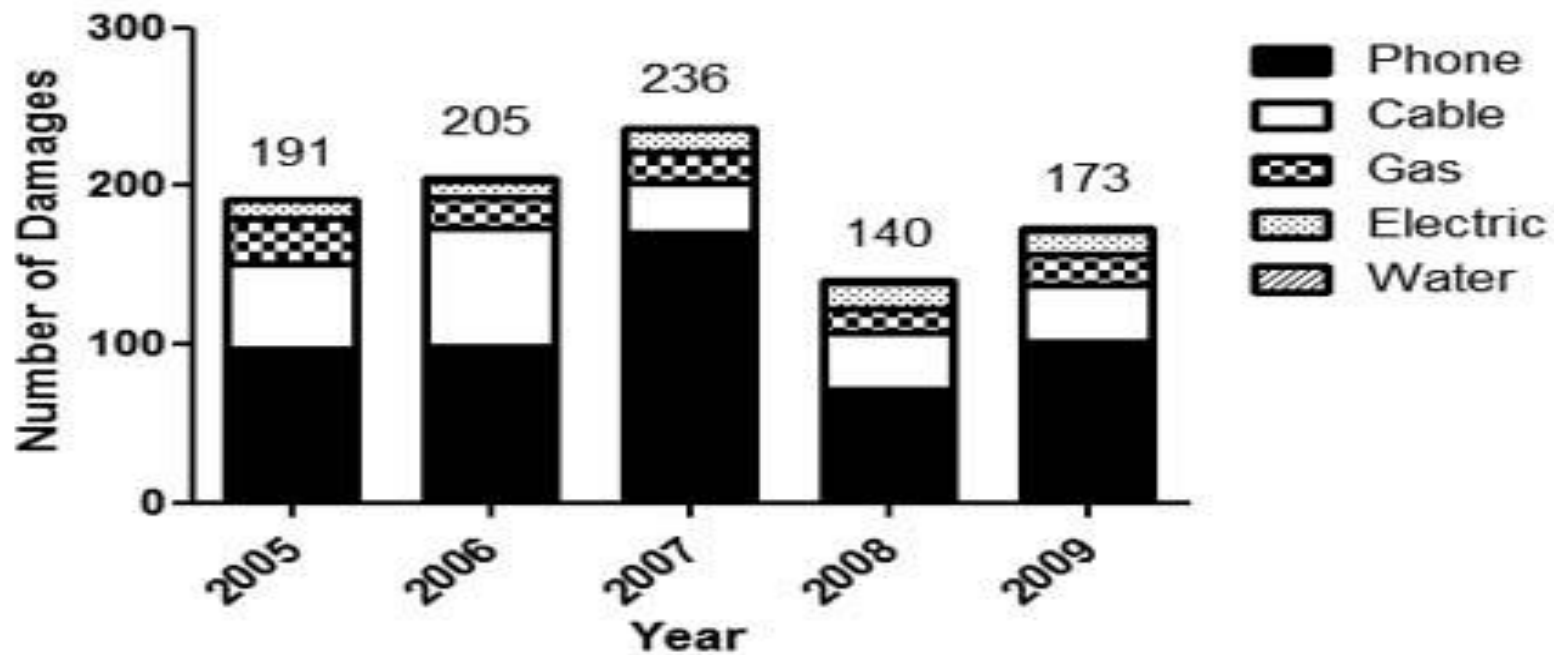
- * (B) The Governor shall appoint members to an Underground Technical Committee in accordance with procedures established through 3781.34
- * (B) (6) to assist the Commission in the enforcement of the Act. Underground Technical Committee shall serve as an entity to provide subject matter expertise in Commission investigations
- * as well as a body for review of contested Notices of Determination. Underground Technical Committee
- * shall perform additional duties as may be assigned by the Commission from time to time.
- * Persons appointed to the Underground Technical Committee shall have expertise with the operation of 153.64 and 3781.25-3781.33 and shall be actively involved in damage-prevention activities at the regional or state level".

What is coming down the Pipe?

- Mandatory Reporting for everyone
 - *(A) Each excavator, designer and/or operator of an underground utility facility shall report to the enforcement agent or its designee probable violation of ORC 153.64 and 3728.25-3728.32 including those that do or do not result in damage to facilities within 30 working days of the probable violation or of the operator's actual knowledge of the probable violation.*
 - *True measurement*
 - Which utility type would have the most damages?

Example

Summary of Damage Incidents by Utility Type



Element 9 – Data Analysis to Continually Improve Program Effectiveness*

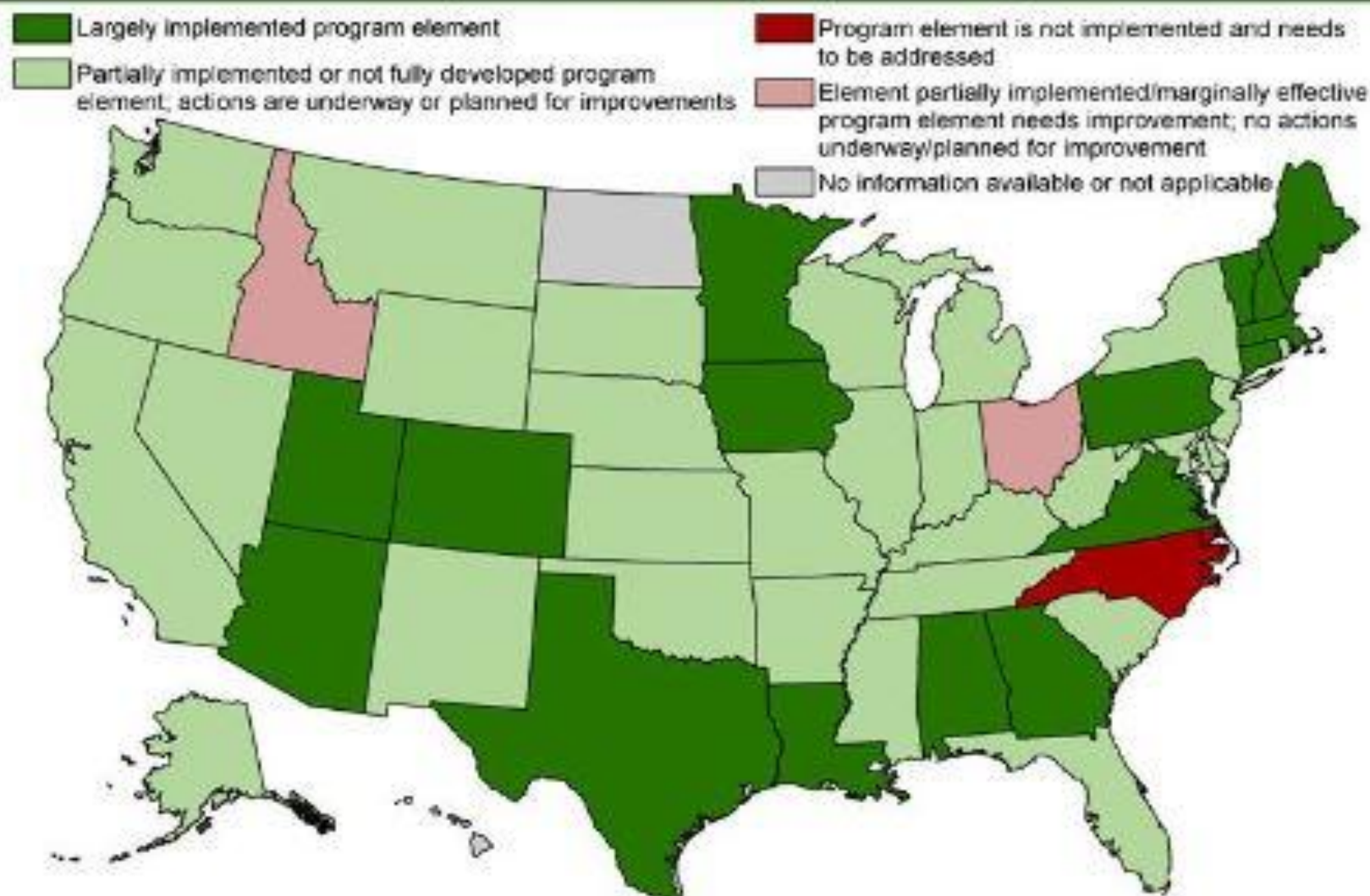
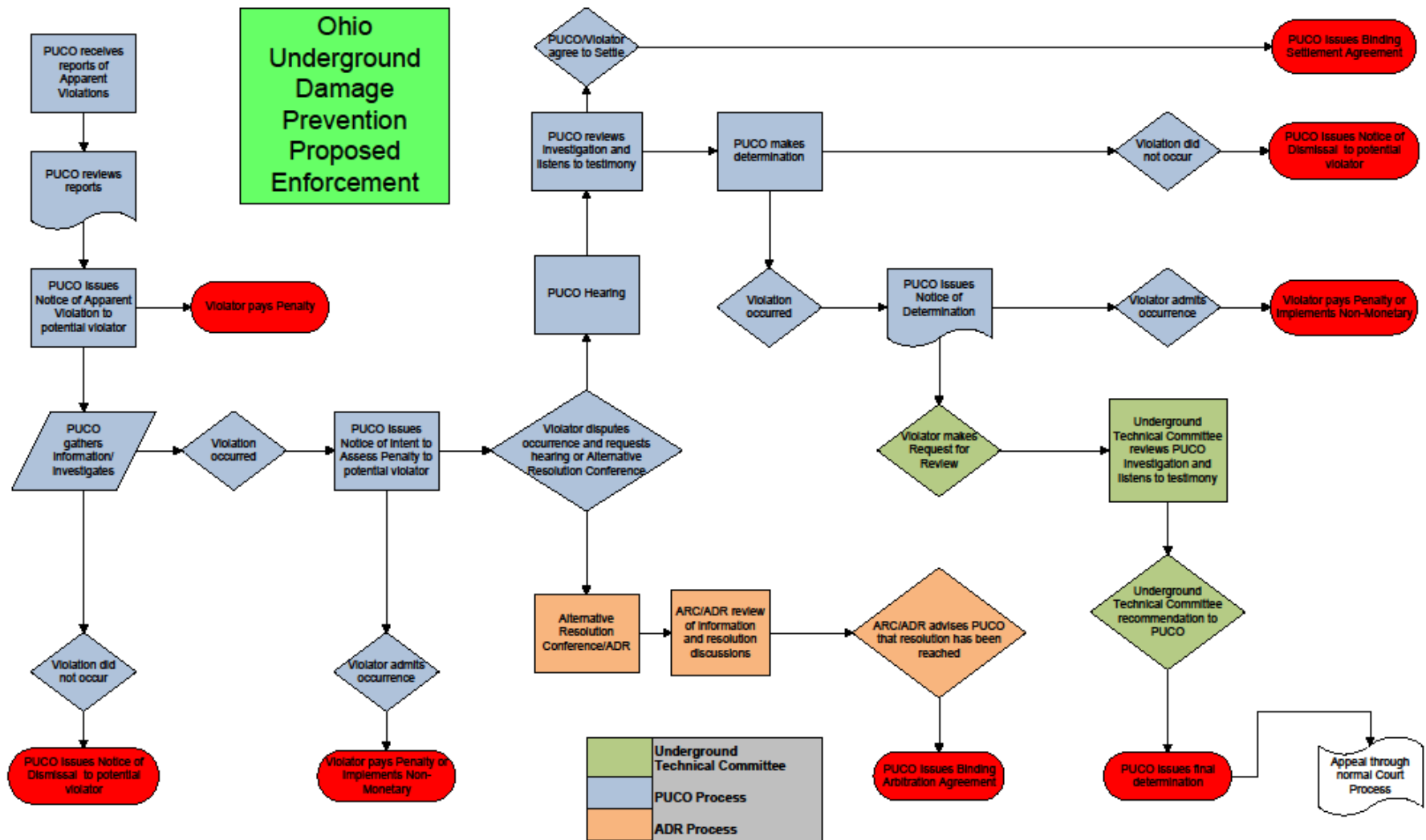


Exhibit 9: "A process for review and analysis of the effectiveness of each program element, including a process for implementing improvements identified by web program reviews."

Enforcement Flow Chart Process



Non-Monetary Penalties-

- (a) a warning,
- (b) attendance at a safety training course at the expense of the violator
- (c) a directive that utility determine, map, and document for future reference the location of the facility for a reasonable distance, as determined by the Commission
- (d) a directive that the violator submit a corrective action plan to the Commission that outlines how the violator will comply promptly.
- (e) a directive to implement procedures to mitigate the likelihood of damage to underground facilities
- (f) other non-monetary penalty as determined appropriate by the Commission

Penalties

- Monetary penalties shall start at \$1000 plus applicable multipliers as defined in subsection (B) of this section when applicable.
- If the violation of sections ORC 153.64 or 3728.25-3728.32 results in a damage to the underground utility facility, the penalty may increase by \$5,000 - \$50,000 per occurrence. No penalty shall exceed \$250,000 for any series of related violations
- Seem excessive?
- PHMSA penalties : 200,000 per violation per day not to exceed 2 mil for a series of events (NO UTC here)

Penalties

- The following may be considered in penalty reduction:
- (1) the demonstrated good faith of the party charged;
- (2) the violator's demonstrated history of one call and/or excavation practices in the previous 12 months, including but not limited to
- (a) number of locate requests received and responded to
- (b) number of successful locates completed
- (c) number of one calls placed

Payment of Penalty

- * (A) The Commission will establish The Underground Utility Damage Prevention Fund to be used by the Commission for administering damage prevention grants. All penalties collected pursuant to section Revised Code 3781.37 shall be deposited into the Underground Utility Damage Prevention Fund.
- * (i) public awareness programs established by a notification center or other entity;
- * (ii) training and education programs for excavators, operators, line locators, and other persons;
- * (iii) programs providing incentives for excavators, operators, line locators, and other persons to reduce the number and severity of violations of this section.

Back to PHMSA

- Will they come?
- Presentations indicate... They are coming

What has PHMSA said?



U.S. Department of Transportation
Pipeline and Hazardous Materials
Safety Administration



Exemptions and Grant Eligibility

- EXEMPTIONS PROHIBITED.—In order to qualify for a grant, a State one-call notification program may not exempt municipalities, State agencies, or their contractors from the one-call notification system requirements of the program.
- This applies to both One Call Grants and State Damage Prevention Grants.
- PHMSA analyzed state one call laws and developed list of affected states. Goal: Maximize state eligibility

What has PHMSA said?



U.S. Department of Transportation
Pipeline and Hazardous Materials
Safety Administration



Civil and Criminal Penalties (see NPRM for complete language)

- PHMSA may assess civil penalties for violations of the excavation damage prevention requirements proposed in the NPRM
 - Only in states with inadequate enforcement programs
- The maximum administrative civil penalties that may be imposed are specified in 49 U.S.C. § 60122.
 - Max of \$200,000 per violation per day, up to to \$2,000,000 for a related series of violations
- Criminal penalties may be imposed as specified in 49 U.S.C. § 60123.



Back to PHMSA

- Will they come?
- Letters indicate..They are coming

What has PHMSA said?

- In a letter dated December 17, 2013
- Addressed to the Speaker of the House and the Senate President

I am writing to bring two important pipeline safety matters to your attention. First, I am following up on a letter sent to Governor Kasich's office in March 2013 stating that certain exemptions in Ohio's one-call law will affect Ohio's eligibility for State Damage Prevention (SDP) and One Call grants effective January 3, 2014. The Pipeline and Hazardous Materials Safety Administration (PHMSA) has awarded funding to organizations in Ohio through these grant programs as recently as 2012. In the March letter, we asked for a response by May 3, 2013, which would either affirm or dispute our interpretation of the exemptions in Ohio's one-call law and their impact on your State's eligibility for damage prevention grants. We have not yet received a response.

What has PHMSA said?

Letter Dated February 24, 2014

Addressed to the Tennessee Regulatory Authority

Executive Director

PHMSA places a priority on strong damage prevention because it is the leading cause of pipeline incidents that result in death and injury. We know that such incidents are preventable, but reducing these incidents is only possible when there is shared responsibility among all stakeholders, and we encourage collaboration among the stakeholders in Tennessee.

PHMSA State Evaluation

Ohio State Damage Prevention Program Characterization

Effective Damage Prevention Program Element

Follow links to see maps of how the elements are implemented among the states.



Element 1 - Enhanced Communication between Operators and Excavators



Element 2 – Fostering Support and Partnership of all Stakeholders



Element 3 – Operator's Use of Performance Measures for Locators



Element 4 – Partnership in Employee Training



Element 5 – Partnership in Public Education



Element 6 – Enforcement Agencies' Role to Help Resolve Issues



Element 7 – Fair and Consistent Enforcement of the Law



Element 8 – Use of Technology to Improve the Locating Process



Element 9 – Data Analysis to Continually Improve Program Effectiveness

PHMSA State Evaluation

Indiana State Damage Prevention Program Characterization

Effective Damage Prevention Program Element

Follow links to see maps of how the elements are implemented among the states.



Element 1 - Enhanced Communication between Operators and Excavators



Element 2 - Fostering Support and Partnership of all Stakeholders



Element 3 - Operator's Use of Performance Measures for Locators



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Element 6 - Enforcement Agencies' Role to Help Resolve Issues



Element 7 - Fair and Consistent Enforcement of the Law



Element 8 - Use of Technology to Improve the Locating Process



Element 9 - Data Analysis to Continually Improve Program Effectiveness

New Jersey State Damage Prevention Program Characterization

Effective Damage Prevention Program Element

Follow links to see maps of how the elements are implemented among the states.



Element 1 - Enhanced Communication between Operators and Excavators



Element 2 - Fostering Support and Partnership of all Stakeholders



Element 3 - Operator's Use of Performance Measures for Locators



Element 4 - Partnership in Employee Training



Element 5 - Partnership in Public Education



Element 6 - Enforcement Agencies' Role to Help Resolve Issues



Element 7 - Fair and Consistent Enforcement of the Law



Element 8 - Use of Technology to Improve the Locating Process



Element 9 - Data Analysis to Continually Improve Program Effectiveness

WHAT'S NEXT?

Next in the process are interested party meetings (IP)

- VERY IMPORTANT! Why?
- First, We have an opportunity to design enforcement instead of having it designed for us - ex. UTC
- Second, WE HAVE THE ATTENTION OF THE LEGISLATORS - and they are paying attention
 - Who is there
 - Who is NOT there
 - What they are saying
 - What they are NOT saying

Questions

- Available for further information
 - [Jennifer Reams](mailto:Jennifer.reams@tallgrassenergyllp.com) Jennifer.reams@tallgrassenergyllp.com
 - Bill Schedel Jr, (MPC) wjschedel@marathonpetroleum.com
 - Jonathan R Culbreath, (Jon Ross)
Jonathan_Culbreath@kindermorgan.com
 - Terry Riesen, (MPC) tjriesen@marathonpetroleum.com
- Kirk Steinberger, Kirk_Steinberger@kindermorgan.com
- Thank you and remember:

The best way to predict the future is to create it!