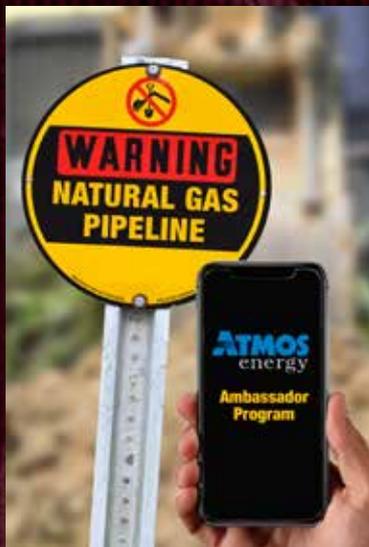


Louisiana



2020 Issue 3

8 1 1 M A G A Z I N E S



This issue is dedicated to
Enforcement





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 - Bureau of Safety and Environmental Enforcement
 - Louisiana Public Service Commission
 - PHMSA (DOT)
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from the desk of

Brent Saltzman



As I write this message, we've just incurred one of the most powerful hurricanes we've ever experienced in Louisiana. Hurricane Laura caused massive damages to multiple areas of our great state but especially to our friends in and near Lake Charles. Our prayers certainly go out to anyone impacted by this catastrophic event.

It's difficult times like these that show our resiliency. Louisianians are extremely tough, have endured more than our fair share of adversity before and I'm confident we'll come out on top yet again.

Restoration efforts are in full force and I'm sure will be ongoing by the time this is published. As with any adverse situation, communication is the key in making progress and Louisiana 811 is here to assist in that endeavor for our stakeholders.

Many of our member companies are going to be extremely busy for weeks, if not months, restoring vital infrastructure. Because of this, members are faced with stretched resources which may impact the response time to locate their underground utilities and facilities. Therefore, we're continuing to encourage the postponement of all excavation and demolition in impacted areas unless absolutely necessary for the foreseeable future. Excavators can - more than likely - expect to receive calls or some other correspondence from utility companies requesting to delay the marking of their underground utilities. Our hope is that both parties, excavators and owner/operators, will communicate with each other to work things out. At the end of the day, we all have a job to do and working through adversity like this is no exception.

I urge everyone to be patient, listen to each other and work together. We WILL get through this and with faith I know we'll overcome this obstacle.

As always, please feel free to reach out to me if you have an idea how we can do better as your One Call Center. We don't have all the answers but we're definitely willing to listen and assist when we can.

Until next time, please be safe out there because someone is depending on YOU to come home at the end of the day!

Brent Saltzman
Executive Director
Louisiana 811

Louisiana 811



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2020 Issue 3

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Roger Cox, Publisher

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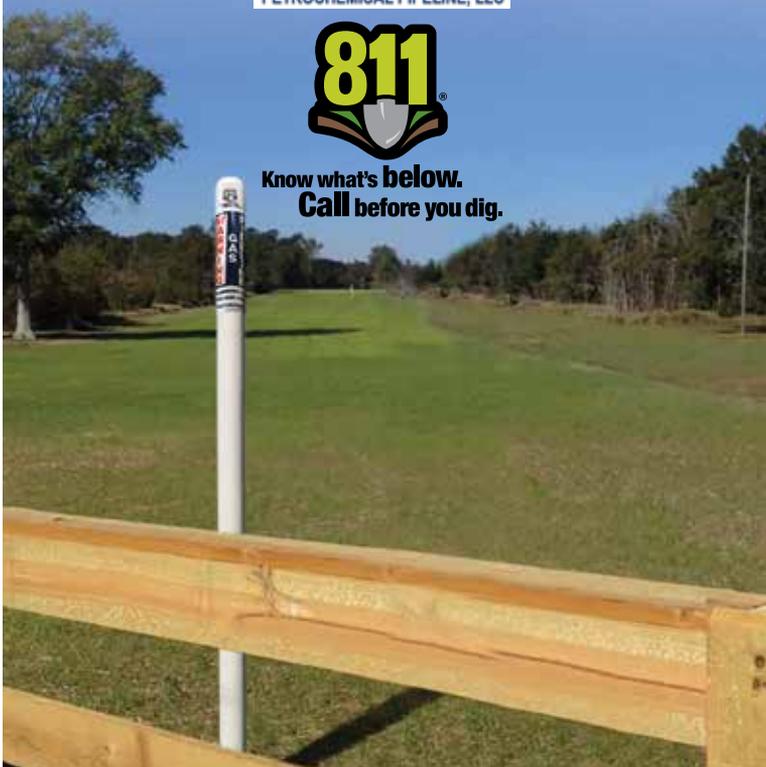
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 - Mobilitie, LLC
 - Petrodome Operating, LLC
 - Right Way Properties, LLC
 - SouthWan Communications
 - Town of Independence
 - Village of Clarence
 - White River Operating, LLC

Operations Report

Incoming Calls:

2019 thru Aug – 482,617
2020 thru Aug – 485,365

Outgoing Notifications:

2019 thru Aug – 2,322,787
2020 thru Aug – 2,329,016

Call Ratio (In to Out)

2019 thru Aug – 1: 4.81
2020 thru Aug – 1: 4.80

On-Line Ticket Entry

2019 thru Aug – 77.21%
2020 thru Aug – 79.32%

Dig Laws, Regulation Changes, & Enforcement Data

An Overview with Steven Giambrone

by Melissa Hancock
811 Magazines



Louisiana Department of Natural Resources Pipeline Division Director, Steven Giambrone works hard to oversee safety in the Pipeline Division's five programs. "The main programs are Pipeline Safety Programs. We certify yearly with the U.S. Department of Transportation to regulate the Intrastate Gas and Hazardous Liquid Pipelines in Louisiana," explains Steven. "We do that through an inspection program where we audit the pipeline operators. Then there's the Pipeline Operations Program which regulates the Intrastate Natural Gas Transporters and it is more about operations and ensuring adequate natural gas supplies for Louisiana businesses and citizens than safety. We also have our Underground Natural Gas Storage Inspection Program where the Injection and Mining Division regulates and permits the storage caverns and the Pipeline Division inspects the wellheads. That's also through a federal program with the U.S. Department of Transportation. And lastly, we have our Damage Prevention Program where we enforce the damage prevention laws on pipeline right-of-ways only. We don't have authority for the other types of utilities."

Steven became the Director of the Pipeline Division in February of 2015. He started his career with the Department of Natural Resources in the Engineering Division in June of 2002 after graduating from LSU in Petroleum Engineering. He moved to the Pipeline Division in 2008 and has been there ever since. An important part of Steven's role as Pipeline Division Director is to stay aware of and help implement the changing legislation around damage prevention laws and enforcement in Louisiana. "Our division took over enforcement during the 2017 regular session," explains Steven. "The Legislature passed House Bill 389 that granted the Commissioner of Conservation (Richard Ieyoub) the authority to enforce on pipeline right-of-ways. The Commissioner of Conservation is over our office and has the final say over everything we do as far as regulating the oil and gas industry. He is appointed by and answers directly to the Governor."

"Later, Senate Bill 82, which was introduced in 2019, granted the Commissioner the authority to extend the mark-by time and the expiration dates on locate requests that were in marine environments." Steven explained the intricacies of how this bill is a helpful addition to the law. "It's a little more difficult to get out there and mark in the water and it might take a little more time to locate. 48 hours is not always possible to do. In Louisiana

CONTINUED ON PAGE 6



Always call 811 before you dig.

And if you suspect a gas leak, call **1-800-ENTERGY (368-3749)** or **911**.

At Entergy, safety is our number one priority. Make it yours!



A message from Entergy New Orleans, LLC and Entergy Louisiana, LLC ©2018 Entergy Services, Inc. All Rights Reserved.

CONTINUED FROM PAGE 5

law, the two parties, consisting of the excavator and the utility, can agree to extend the mark-by time themselves, but if they can't come to some kind of agreement and the pipeline operator says, 'Look, I can't get this thing marked. If they come out here to dredge, they're gonna hit my pipeline', then obviously that's a safety issue that needs addressed. So, then the pipeline operator can come to us and say, 'Hey, I want you to extend my mark-by time.' We can then order the excavator to wait a week or whatever we decide. On the flip side, the dredging contractor may be out there working for months and forget to update their ticket. He's on day 19 of his ticket and says 'Gosh I missed my window, now I've got to shut down.' That's a very expensive thing to do. So, the Commissioner can grant an extension to that expiration date provided the pipeline is still marked and the pipeline operator has no objections." Steven interprets the application of this law in a way that is easy to understand. "So, if we can determine that it's safe to continue working, the Commissioner can extend the expiration date. In doing so, the contractor has the peace of mind that they can continue to work safely and also know they're not in violation of the law." Steven said, "This can be extremely beneficial to both parties. There's something for the operator, who maybe can't mark in time. And there's something for the excavator who perhaps forgot to update their ticket."

In this past legislative session, Senate Concurrent Resolution 69 formed the One Call Agricultural Study Group. Although Steven is not a voting member of the group, his role is to assist the group which is made up of stakeholders, utility operators, farmers and landowners. He said, "What the resolution is asking us to do is to look at whether or not the state should grant some exemptions to the agricultural community from the One Call requirements. A number of states have exemptions for agriculture and they're asking us to look and see if such exemptions would be appropriate in Louisiana." The final proposed change is yet to be determined. Steven continued, "Additionally, House Bill 382 was filed. This Bill would make positive response and white lining a requirement." but it hasn't been heard yet due to COVID - 19.

Another of Steven's roles is to review the yearly enforcement data, the annual reports the Pipeline Safety Program receives from their pipeline distribution operators saying how many tickets they received and how many damages they had. "The data looks pretty good. We have a few operators that had some issues in 2019 and we're addressing those. Overall, what we learned from the data was encouraging," explained Steven. "The damages are broken down by root cause. When we review the data, we look to see if the damage occurred as the result of no ticket or perhaps it was not located properly or not properly exposed?"

He observed, "One of the things we discovered was that operators who saw a significant increase in tickets saw a decrease in damages and then an operator who saw a significant decrease in tickets, many times saw an increase in damages."

So, what does that mean? He said, "What that tells me is that the 'call 811 before you dig' message is getting out there. In other words, I don't think the increased ticket volume was due to more new work, but rather I think the increased volume was due to an increase in the awareness to call before you dig. My logic is that with more new work coupled with the same old habits would generate an increase in damages as a result of the additional work. On the flip side, if you're seeing an increase in tickets and decrease in damages, it probably means they have been doing the same volume of work all along, but now they're making the call. And that's all we ever wanted. Call 811 before you dig, that's the best first step ever taken in the field." Steven shared, "This seems to be a nationwide trend. Damages can be prevented, we've just all got to work together."

When asked if there was anything Steven would want the community to know, his response was a genuine offer of support. "You know, we're here to help. We're here to help the Operators and the Excavators. If anyone has an issue, they can call us. If you have a complaint, don't be afraid to call us to file a complaint. We want to change attitudes and the way folks work. That doesn't always necessarily mean a fine, it can simply be through education. Education is a part of every citation that we issue. It's required that they do some education for the person who committed the violation. If we can bring down damages through education and communication in meetings, that's just as good as fines... actually, that's better than fines. However, we will get there and we'll use whatever tools are at our disposal to make it happen." 📞

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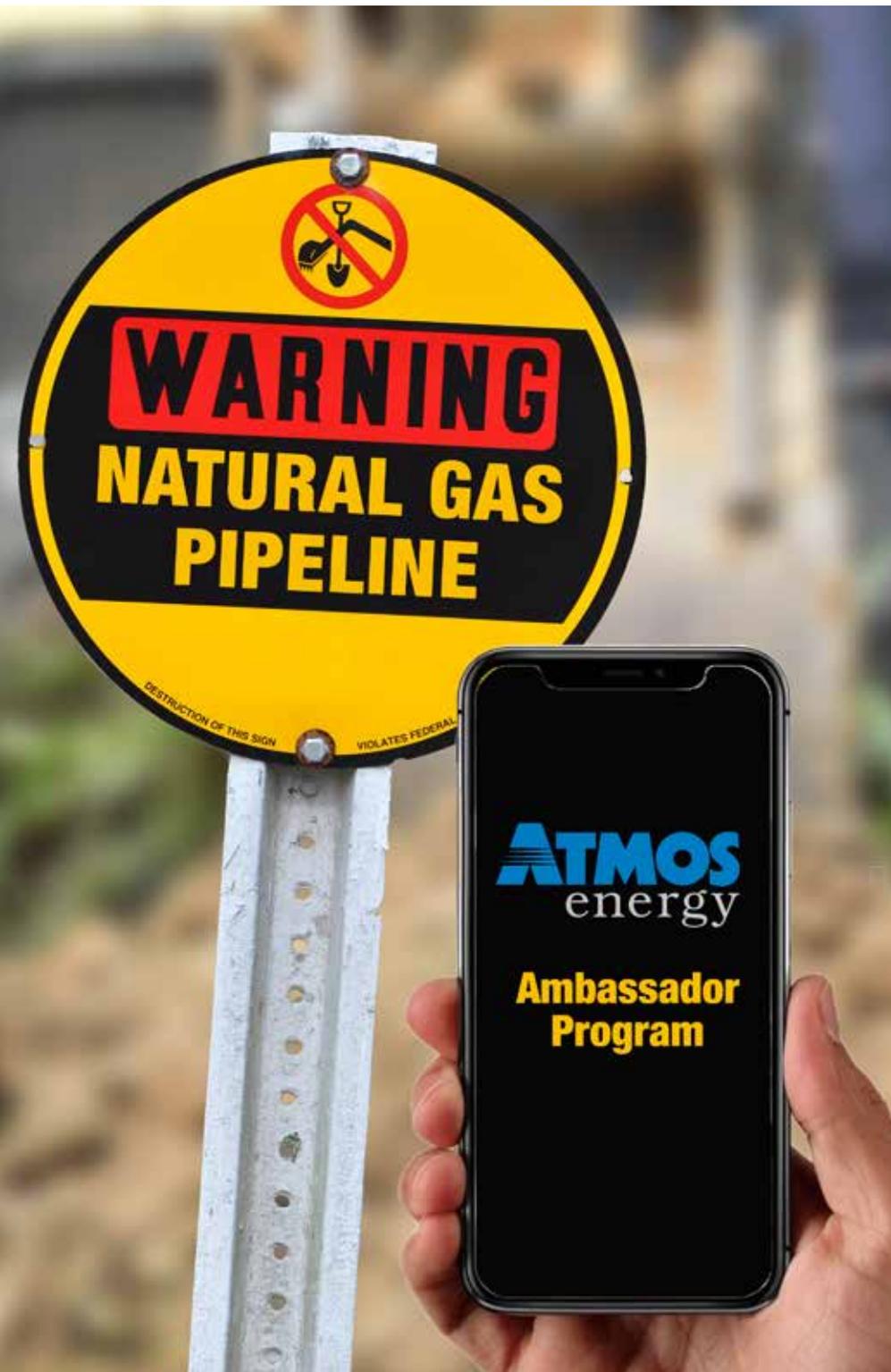
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Courtesy Stops I

By Michael Downes
811 Magazines

Atmos Energy's Ambassador Program



State and federal regulators require pipeline companies to routinely monitor their facilities for hazards and damage. But an industry leader has taken that to the next level, and now follows up with excavators as crews drive across the state.

Last year, Atmos Energy rolled out a new Damage Prevention Ambassador program in eight states, including Louisiana. After just one year, they're already seeing a reduction in damages.

"The program has worked very well," according to David Raymond, Operations Manager with Atmos Energy in Lafayette. "Damages dropped off 22 percent from the previous year, although we can't credit all of the drop to the Ambassador Program primarily due to COVID-19 effects, but we are making stops and seeing that damages are dropping."

The Ambassador Program marries technology with good old-fashioned representation in the field. About 235 employees have been trained to document the stops via an app, where the app is installed on a mobile device like a smartphone or iPad, which helps track their interactions with excavators.

The Ambassadors are primarily those who drive a company vehicle and are typically in the field during a significant portion of their day. The purpose of the program is to engage with excavators operating near Atmos infrastructure.

"We use a mobile app called iAuditor that allows a person with the app to stop at an active excavation site while they're on their way from Point A to Point B in a company vehicle," David said.

Many employees know generally where company infrastructure is, which can be confirmed by Atmos Energy pipeline markers at road, water and railroad crossings as well as through the company's GIS maps. When they notice an excavator working near Atmos Energy mains or services lines, they can pull over and launch the app to document their

Increasing Safety

reaches thousands of excavators per year

stop. The software logs the location of the stop by GPS coordinates and allows the user to add photos of the jobsite, along with their notes.

“The app has seven questions and geocodes the exact GPS coordinates of where you are. The address, date and time you stopped are pre-populated.” David said. “When we engage with an excavator, we let them know we have facilities in the area, and ask if everything is going OK, and ask if they’ve been able to locate our facilities. It starts a dialogue.”

David said that 99 percent of the time, they know before walking up to the foreman if there’s a ticket or not. Atmos Energy employees check for an 811 ticket before getting out of their vehicle. If no 811 ticket has been submitted, they have educational literature they can leave with the excavator explaining the importance of submitting a ticket with Louisiana 811 either by phone or online and information on how to submit a ticket.

Their role isn’t to be the excavation police, but rather to make sure that every excavator is aware of what lurks below their shovels and encourage free participation in the 811 system.

Most of the time, Atmos Energy employees are finding that excavators have an active ticket with Louisiana 811, are in compliance with the law and are being mindful of the company’s lines. But when there’s not a ticket, there’s more work to do. They’ll ask the excavator if they have a valid ticket number that the Atmos employee couldn’t find. If the answer is no, then they leave a safer digging pamphlet. Either way, they document the worksite with photos, and log it into the iAuditor app.

“We’ve been performing continuing surveillance for years as required by federal law,” David said. “We are required to perform continuous

surveillance of our facilities to identify threats - and this helps us document what we are doing to show the Louisiana Department of Natural Resources Office of Pipeline Safety and PHMSA (Pipeline Hazardous Materials Safety Administration) what we are doing to protect our underground facilities.”

After a year of the program, employees have made more than 2,500 stops at excavation sites, and left literature at 1,500 of the sites. That indicates an excavation site where there was no ticket, or employees witnessed digging in the tolerance zone with mechanized

“It’s not our goal to police the excavators...”

equipment on top of the company’s underground facilities — a big and very risky practice.

“The tolerance zone for our lines is 18 inches on either side of the pipe. You should to be using hand tools or hydro excavation when digging around pipes,” he said.

But not every stop is adversarial in nature.

“There were more than 1,000 stops where we didn’t drop off literature, because those people were doing everything 100 percent by the law, and digging safely,” he said. “We shake their hands and tell them they’re doing a good job and thank the professional or the homeowner for doing everything by the law.”

Some excavators aren’t wild about the courtesy stops, but most have been

friendly and agreed to move toward compliance.

“It’s not our goal to police the excavators but starting the communication so we can share with them that damage prevention is a shared responsibility,” David said.

However, out of the 2,500 stops, about 20 required a call to the state’s Office of Pipeline Safety to stop the excavation activities. Those resources are only called in for the most serious issues where an excavator refuses to comply.

“We’ve had a few that said, ‘Don’t confuse me with the facts, I’m not stopping, I’m not calling, etc.’ and we had to get an agent from the Office of Pipeline Safety involved. The OPS inspectors have been very responsive,” he said.

The Louisiana excavation community is pretty tight, he said, and the goal is to change behavior — especially those excavators who don’t regularly call 811 — that the next Atmos Energy vehicle that drives by might stop and ask you for your 811 ticket number.

“What we’re talking about is behavior modification. If you want excavators to call 811, this program helps. If they get caught once we hope the next time they just call 811. Ninety-nine percent of the time when you call 811, there is no damage,” he said.

Atmos Energy operates in seven other states, and the Ambassador Program has been rolled out in each of them. The company’s footprint in Louisiana is second only to Texas, where the company is headquartered and operates their largest pipeline network.

Altogether, the company has made more than 20,000 courtesy stops so far, and plans to continue the program well into the future. 

How Can If It Doesn't Include All

By Roger Cox
President
ACTS Now, Inc.

Effective enforcement is not a new concept. It is not even a new concept as it relates to the enforcement of a state's dig laws, sometimes referred to as "one-call laws." The truth is, several years ago U.S. Congress, reacting to national tragedies involving underground gas and pipelines and armed with statistics showing more than 30% of all damages to underground facilities were caused by third parties, made protecting underground lines a high priority, and rightly so.

As a result of this congressional interest, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a directive that stakeholders come together to create a measurable and more effective damage prevention program in each state—one that is based on accountability and preferably at the local state level. And again, the focus was to protect underground pipeline and gas infrastructure.

The nine elements of effective damage prevention programs were cited by Congress in the Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006. Naturally, the activity at the federal level created activity at the state level, in part as the result of Elements 2 and 7. Element 2 is "Fostering support and partnership of all stakeholders." And of course, Element 7 is "Fair and consistent enforcement of the law."

Defining "support and partnership of all stakeholders" created some

interesting dialogue. However, getting all stakeholders involved was, and is, smart for all the reasons you already know. Try convincing a water operator that an excavator who damaged a gas line without a 811 ticket could be fined, but that same excavator who damaged a water main without calling in a 811 ticket could not be fined because, "That's not my jurisdiction." Another immediate frustration often encountered is the excavator being held accountable for not properly exposing the underground utility but has no recourse if the utility line isn't marked in a timely fashion.

Back in the earliest days of such discussions, it didn't appear to me that any one stakeholder group was opposed to accountability. On the contrary, everyone seemed to understand and endorsed the principle of accountability. In part because all stakeholders were aware of traffic laws and how they worked.

It's not the fine that causes us to drive within the speed limit; it's the threat of the fine. If it were not there, most of us would drive much faster. The threat of the fine, speed limit signs, the patrol car on the side of the highway, billboards and other advertisements all worked together to remind us to drive safely.

No highway official wants to fine us, they simply want to slow us down. Effective enforcement is not now, nor has it ever been, about fines. It's a change in our behavior that is expected and if we slow down, then the law is

working. Fines are for those who refuse to change their poor behavior.

The objective of enforcement on our state's highways is clearly to keep the public safe.

Enforcement also has a crucial role to play in the criminal and civil justice systems of a modern, democratic society; consequently, there must be ways to enforce the rules.

Imagine if there were no means of collecting property taxes, child support debts or enforcing traffic laws, such as speeding or driving under the influence.

People ordered to pay a court judgment, civil penalties, and compensation awards, or to comply with the terms of a community sentence, will have little or no incentive to do so if they know there is no effective means of enforcing it. Unless there is prompt and effective enforcement, penalties and public confidence in the justice system will be undermined.

The model of effective enforcement has already been adopted and embraced by our elected officials. It seems only logical and reasonable that stakeholders charged with looking out for the best interests of our citizens, while protecting our underground infrastructure, would find a way to develop a similar standard—one created by consensus that would protect those who do what's right, educate all involved so that the desired behavior is known and hold accountable those who

It Be Fair Underground Utilities?

simply refuse to act in the best interest of our communities and families. And to be fair, many are saying if a violation of the state's dig law occurs, it should not matter which utility line is beneath the violation.

Creating such standards should be a lot easier than it has been or will be, but those who are committed to protecting our families and our infrastructure always finds a way to make it happen. It won't be achieved by going around or over someone. It will be achieved by working together with other professionals who recognize what is at stake.

We don't want our families placed in harm's way by reckless behavior, whether it's excessive speeding or driving under the influence. We have certain expectations that those who disregard these laws will be held accountable for their decisions.

There should be the same expectations when it comes to protecting our underground infrastructure. This is also about public safety. If the objective of fair and consistent enforcement is damage prevention, and damage prevention benefits everyone, then by default we find ourselves on the side of fair and consistent enforcement. Fining someone for making a mistake just makes them angry and is neither effective nor fair. Enforcement of the state's dig law is designed to change behaviors. And behaviors are changed through education and accountability—

by educating all stakeholders to abide by the dig law and hold those who don't, or won't, accountable.

Creating the environment for sharing different ideas and perspectives is a critical step in moving toward adequately enforcing the state's dig law for all utilities. Enforcement that is seen as fair for all stakeholders and effective in reducing damages is the result of reducing the number of violations that occur every day.

To be sure, effective enforcement will always be a work in progress, in part because there are so many different perspectives to consider. Additionally, until enforcement is a reality, it's hard to determine the enforceability of existing laws that were passed twenty years ago.

"I'm interested," you say, "But where do I start?" I get asked that question quite a bit across the country, especially as more and more states are beginning to consider or implement enforcement for violations to their dig law, without regard to utility type.

So, in the first place, getting started is a matter of recognizing that all underground utilities are important and must be protected. It may be that you already believe this to be true. Then recognize that you aren't alone. The other thing here is to recognize that there will be much opposition to the idea and some for reasons you never knew.

And in the second place, we must create the environment for the free flow of information and perspectives. That involves identifying as many stakeholders as is possible and provide a seat at the table for their ideas. Many utilize the state's 811 center as the facilitator for these discussions. Others use their Regional Common Ground Alliance (CGA) groups to facilitate the discussions. Mutual respect for each other's perspectives is the best way to keep the conversation flowing.

Finally, and in the third place, do not get in your own way in the first place. Too many times we shoot ourselves in the foot by getting too emotional and confrontational in meetings with such a wide range of ideas and perspectives. It is important to remain committed to the goal of answering the question: "What is the best way for us to work together to protect our underground infrastructure?"

To achieve the goal of reducing damages, we must work to build consensus to amend the current "dig law" to promote accountability while working around underground facilities. The aim would be to improve existing good practices, raise the level of professionalism across the entire industry and increase awareness of all stakeholders' responsibilities.

"Impossible!" you say. I really don't know if it's possible in your state...I just know it's necessary.

Dig safe! 

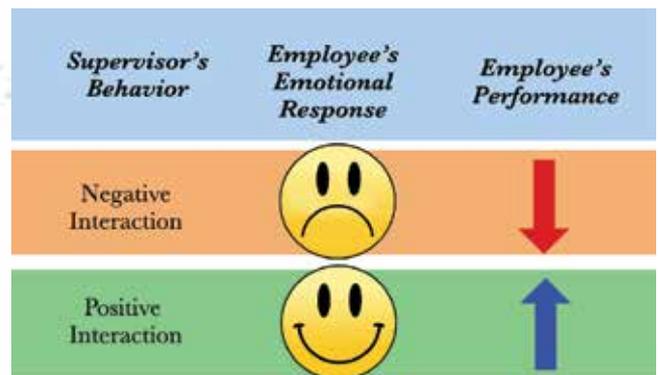
Engaged Employees Work More Safely

By Larry Cole, Ph.D.
TeamMax



The secret is out...engaged employees are more productive and committed to their place of employment both of which lead to increased customer satisfaction and net profits. Yes, and in your industry, engaged employees also work more safely.

In the 30+ years that I've worked as a consultant, literally every leader and management structure with whom I've worked say that they want an engaged employee, yet Gallup Poll, among others, report that only 35% of employees are engaged with their work. Research also states that at any given time some 60% of the employees are either looking or will take another job if it's available. What is wrong with this picture? The answer — the way employees are treated! Take a look at this illustration.



I hope I know which of these two scenarios you would like to have. All I'll say at this point is if you want then top scenario in your company, then something is drastically wrong. Having said that, I've seen supervisors who seem to enjoy treating people like a baby treats a diaper! I might add that the higher this person is in the organizational hierarchy, the more damage is done in that company, which highlights the point that fish rot from their head down! For example, an owner of the company that I was asked to work with would enter one of his locations and walk right by employees without acknowledging their presence. He acted like he just didn't care and that's the impression his employees had. Let your imagination wonder about his employee turnover rate.

Let's take a quick look at what is employee engagement. In brief it is a combination of the following three variables and typically measured through an employee survey:

1. Physical engagement — the amount of energy directed to work.
2. Emotional engagement — the positive feelings associated with employment.

3. **Cognitive engagement** — the degree the employee is focused on their job.

These words sound simple, right? The fact is high employee engagement isn't just going to happen because you want it to — you are going to have to do something different than you're doing today.

I just quantified employee engagement for a company in which 60% of the employees strongly agreed being engaged. In spite of the fact that this percentage is considerable higher than what has been reported (i.e., 35%), the CEO was disappointed as he expected a higher number. We're going to use his disappointment as fuel to propel change.

The space allocated for this article dictates that I be brief as I introduce the two essential tracks to improve employee engagement. One is corporate accountability. That is employee engagement is a regular scheduled agenda item for the senior leaders to review their people metrics in the same fashion as they review their technical metrics. Second is what got you here is not going to get you there in the words

of author Marshall Goldsmith. In other words it is time to apply proven techniques that will promote employee engagement. Let me list a few.

1. Future. Today's employees want to be associated with a company that both know what they are striving to be in the future and why. Employees want to apply their skills in a meaningful way to assist the company's growth. Yes people are hardwired to belong to "something" that is bigger than they are.

2. Challenging Work. Employees want a career path that enables them to be challenged and continue to their personal and professional development. You might be surprised to learn that for many employees this fact is more important than a salary increase.

3. Communicate. Communication is a two-way street — employees want to "be in on things". They want to know what is happening in the company. Additionally, being important enough to be asked for their input is one of the crowning jewels to engage employees and using that input solidifies their importance.

4. Care. Let me close by discussing the old cliché people don't care what you know until they know how much you care about them. The people touch is critically important for employee engagement. The company's owner that I mentioned previously in this article who acted like he didn't care is an excellent example. If that company quantified employee engagement I doubt that it would even reach the 35% level that researchers discuss.

You have to invest time with your employees to talk to your employees about their family, hobbies, career goals and how being employed with the company can help them achieve their aspirations.

I'm out of space so I've got to stop. Thanks for reading and I hope this article stimulates you to create the environment for your employees to become even more engaged, now that you know the secret. 

Larry Cole, Ph.D., is founder of TeamMax a consulting company that helps people work together. Please send questions and/or comments to Larry at teammx100@gmail.com.

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By Joe Igel

Same Picture, Different Perspective

In life, we have all dealt with judgment and enforcement (punishment, fines and penalties, etc.). And sometimes we find ourselves being the one in the position to issue it. When we do so, the clearest and best course of action is not always apparent and can vary with a different perspective. Often it is simply a gut reaction, many times it is well-planned.

As a member of Ohio's Underground Technical Committee (UTC), formed within the Public Utilities Commission of Ohio by legislation signed in December of 2014, I have seen a wide range of issues and means of addressing them. As we deliberated what the law would be, prior to the establishment of the UTC, we worked out a lot of issues so that the UTC was not left with unclear code to follow.

When we first met and started to review complaints, we took small steps. While we were all very familiar with the industry, we were learning the administrative side. The decision early on in our meetings was to split the decision-making process, much as a court of law would bifurcate a case.

First, we review the particulars of each complaint to ensure that the basic components meet the requirements under the Ohio Revised Code. We then evaluate the facts and documentation submitted to us and simply see if the group feels there was a compliance failure by the party whom the complaint was registered against. We

review the evidence submitted by both parties and the relevant portions of the law. If the complaint is clear and well-documented, the decision on compliance or lack thereof tends to be easy.

Second, if the decision in part one was that there was a lack of compliance, we then determine what the corrective action may be, and this is the point at which maintaining perspective is important. When the protocol for the creation of the UTC was being discussed and created, it was clear to all parties in those discussions that this was about correcting behavior, not punishing it. It was not to be about guilt or liability, but about compliance or lack thereof. So, viewing the future outcomes of any actions needs to be weighed carefully:

1. Is this complaint an isolated case, and given the preponderance of locates conducted annually, is it simply not significant?
2. Are there intervening circumstances?
3. Was the action life-threatening?
4. Simply as a result of the complaint being filed, is the potentially offending party now aware of the errors in their approach and understanding of the correct action needed in the future?

5. What has been the past record of the party, especially over the past year?

While these are some of the factors that do enter the discussion, personal opinions regarding any of the parties in the complaint, personal factors that influence the situation (members recuse themselves if involved) do not.

From time to time, we will hear rumors that our decisions, particularly those within the penalty phase, were not "popular," perhaps because they were too lenient or too severe. While I understand this, I truly do not believe that any personal bias influences any of the members' decisions. And importantly, as a stabilizing force, we have representation from all the parties to the process (owners, locators, utilities, excavators, etc.). Many of our decisions are unanimous, some close and never is one contentious.

What often does influence our opinion is much deeper, rooted in our upbringing, our personal history, the impact of which can be significant, but again, the ultimate question must always involve, will the incorrect behavior be corrected? We need to envision a situation where, by the continual corrective course changes, we literally put ourselves out of business. 

Mr. Igel recently retired as vice president of the George J. Igel & Co., Inc. after working there for more than 35 years.

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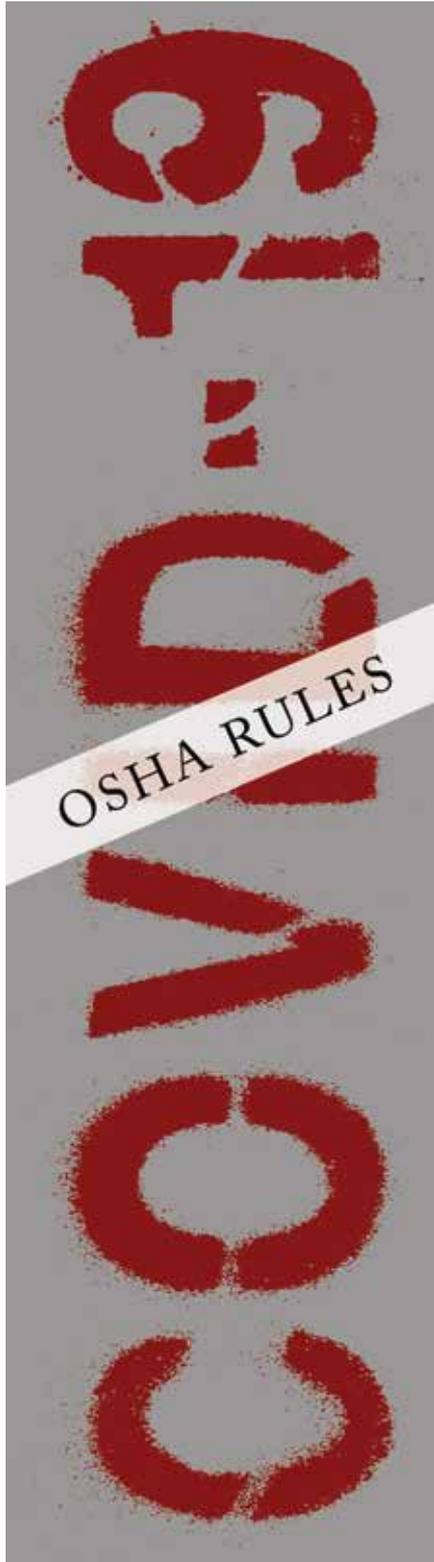
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OSHA Rules Still in Force During Pandemic

Heightened awareness of the invisible hazard a top priority

By Michael Downes
811 Magazines



While the COVID-19 pandemic continues to take its toll on nearly every aspect of American life, work in the construction and utility industries continues full steam ahead.

And Coronavirus is just one of many workplace hazards that face workers every day.

The US Department of Labor, through Occupational Safety and Health Administration, has issued guidance for utility construction workers during the pandemic, in addition to continuing their regular enforcement and oversight activities.

The first portion of the guidance addresses exposure risk levels. Lower risk of virus transmission includes “Tasks that allow employees to remain at least six feet apart and involve little contact with the public, visitors or customers.”

Medium risk tasks include situations where workers are closer than 6 feet from each other, customers, visitors or other members of the public.

High risk tasks include “Entering an indoor work site occupied by people such as other workers, customers or residents suspected of having or known to have COVID-19, including when an occupant of the site reports signs and symptoms consistent with COVID-19.”

Fortunately, none of the “very high” risk category tasks are anticipated in the construction industry.

Still, it’s important to encourage workers to stay home if they have symptoms of COVID-19, and encourage workers to wear face coverings when possible to prevent transmission.

More about OSHA’s construction industry guidelines can be found here: <https://www.osha.gov/SLTC/covid-19/construction.html> Additional COVID-19 tips for the construction industry, as prepared by OSHA, can be found here: <https://www.osha.gov/Publications/OSHA4000.pdf>

A Department of Labor spokesperson, though email correspondence, said the

enforcement of ordinary labor laws is still in effect during the pandemic.

“Employers are and will continue to be responsible for providing a workplace free of known health and safety hazards. OSHA standards related to excavations, protective systems and underground construction remain in place and are enforceable,” the spokesperson said.

They also included a link to OSHA’s trenching and excavation page, which includes information on their “Slope It, Shore It, Shield It” campaign, which is part of the agency’s Priority Goal to reduce trenching and excavation hazards. The guidelines say cave-ins pose the greatest risk to workers’ lives, and that sloping or benching trench walls, shoring trench walls with supports or shielding trench walls with trench boxes can help prevent cave-ins.

Guidelines state that “employers should also ensure there’s a safe way to enter and exit the trench. Keep materials away from the edge of the trench. Look for standing water or atmospheric hazards. Never enter a trench unless it has been properly inspected.”

More about OSHA’s trench safety information can be found here: <https://www.osha.gov/SLTC/trenchingexcavation/index.html>

Finally, the spokesperson mentioned a 2018 safety and health information bulletin on avoiding underground utilities during horizontal drilling operations.

These guidelines will be particularly important in the short term, as federal Coronavirus Aid, Relief and Economic Security Act, known colloquially as the CARES Act, provides economic recovery dollars for states, tribes and local governments for the expansion of rural broadband Internet access, spurring new utility construction.

More about OSHA’s horizontal drilling resources can be found here: <https://www.osha.gov/dts/shib/shibo31318.html> 

LIABILITY



Now What?

*By Virginia Reames
The Policy Center
Jackson, MS*

One of the requirements for getting a contractor's license is showing the Board of Contractors that you have liability insurance. Because technically, every board that issues any kind of license can be held liable if one of their licensees proves himself to be incompetent and—here's the kicker—costs somebody money!

Safety is important, of course, and so are good job performance and great customer service – but the thing that makes the wheels turn is costing somebody money because you did something wrong.

It keeps lawyers driving Mercedes and Lincolns. If you do something wrong that costs someone money, they are going to step into a courtroom and get it back for their clients, PLUS. And a little for their efforts, of course.

How do you protect yourself? Mistakes are going to happen, aren't they? Safety minded contractors hold regular safety meetings, they have manuals, they have regular training meetings. They do everything they possibly can to make sure their guys know what they are doing and how to not only do the job but do it safely. When they fire up that Ditch Witch, they have to know what's below or it's not going to be a safe job. And if it isn't safe, it's gonna cost someone a lot of money and that's what "liability" means. Whomever didn't do it right is the one who is liable to make it right, no matter what it takes.

That's why you have liability insurance. "Well," you say, "I've been doing this for 15 years and never had to use my insurance." Good for you! Then comes the day when someone doesn't do something they were supposed to do, and now thankfully you have insurance, right? If we knew when there was going to be a problem, we'd make sure it never happened, wouldn't we?

Yet the fastest way to run into a problem is failure to call 811. (Drinking on the job would be a close second!) If you are going to disturb that surface soil, you had better know what's under your trencher or excavator...before it goes "BOOM!"

"I don't have time for that" "Time is money." "They take too long" "I ain't had a problem, yet" – yep, heard you. But, as a businessman – and you are a businessman whether you have four crews or it's just you out there – fixing a problem after it happens isn't making money, it's costing money. You didn't save money when you saved time by not waiting for the utilities lines to be marked, now you have to come back and fix the water lines, go to the enforcement board hearing, pay the fine. Why? If you called and the lines were marked and you hit them anyway, now it isn't your fault, not your liability. You followed the law, did what you were supposed to do and now it's on somebody else.

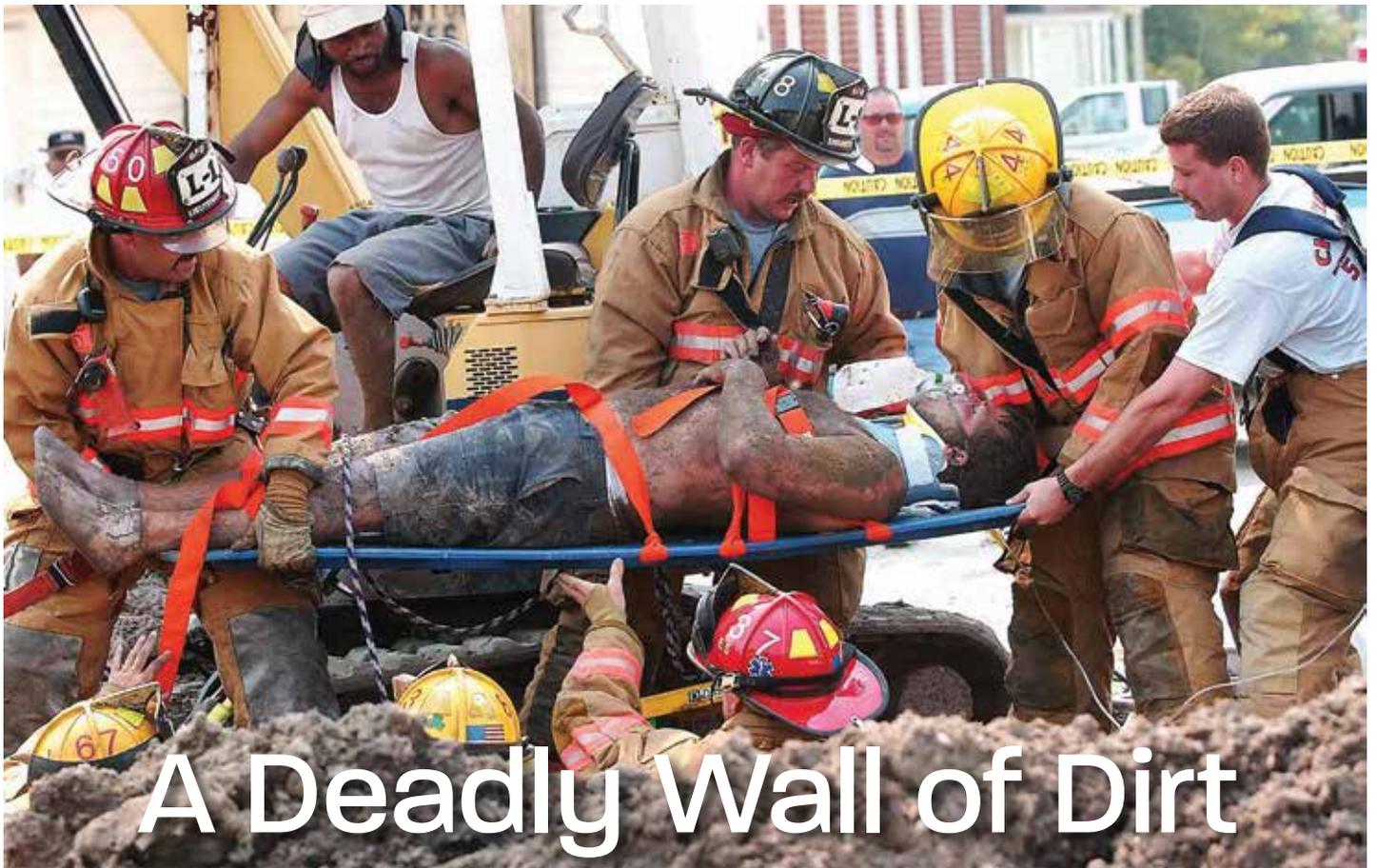
If you didn't call 811 and you hit those fiber optic lines—you can't fix it. That's

going to take other, more expensive, folks. Notice where it said "expensive"? That means coming out of your pocket if you didn't call. And no, you can't turn it into your insurance either, because you broke the law and there is NO coverage if a law was broken. Yes, insurance companies are newly enforcing this exclusion.

A broken law becomes an intentional act and intentional acts are never covered. And yes, now you have to deal with your state's enforcement board because, like it or not, everybody is getting real serious about compliance these days.

There was a contractor who subbed out a short little stretch of road to trench and well, no they didn't call and yes, they hit a fiber line and yes, it took out 911 and no, it couldn't have been much worse. But wait! Yes, it could—the sub wasn't insured (surprised?) and the contractor's insurance declined to pay the claim because 811 wasn't called. Because "intentional acts are never covered." It doesn't say "malice," it says "intentional." When you don't comply with the law, it isn't accidental. And only sudden and accidental acts are covered.

If you know what your insurance covers and doesn't cover, you are better equipped to take care of your business! Build calling 811 into all your procedures. Don't accept "I didn't have time" from your people. It's just not acceptable anymore. 



By Benjamin W. Montoya, MSA
President, Tri-State Safety Services LLC

Photo courtesy of David Dow

Imagine this:

You're at work performing your daily tasks when out of the blue a coworker pulls out a revolver. He takes all but one bullet out, spins the cylinder, slams it shut and asks you to put the gun to your head and pull the trigger. It's nothing to him as he says, "It's no big deal, I do it all the time!" You're at a loss for words, your trusted coworker is asking you to do something that may or may not end your life. Crazy right? You think to yourself, "Why would I do something so stupid and crazy like put a gun to my head and pull the trigger not knowing if there is a round in the chamber?"

That scenario is from a game called Russian roulette and the harsh reality is everyday workers place themselves in danger only not with a gun, but by working in unsafe trenches. We use the analogy of Russian roulette simply because you may play that game and tempt fate all day every day for 30 years, but it only takes once. One bad day for that bullet to be in the chamber, or that trench to collapse.

According to a report from the Bureau of Labor Statistics from 2013-2017, there were 97 trenching fatalities in the construction industry—an average of 19 per year. Though those numbers have steadily gone down over the years, one death is too many.

*So why
is dirt so
deadly?*

It seems we are always hearing about a trench collapse of some form, for example, a worker who didn't go home to his family because he was killed when he was crushed by a collapsing wall of dirt. We see the stories on the news, read about them on social media and hear the tragic news from our friends and coworkers. We are

saddened, confused and angered as to why something so preventable could happen, then we go back to work. Doing exactly what killed the guy we were just talking about, because in our eyes we're doing it more safely... "We're only in those unsafe trenches for a second." How long is a second? Snap your fingers—That's how long a second is. The fact of the matter is, if "your way" isn't OSHA's way, you're simply doing it wrong. And wrong is dangerous and sometimes deadly.

And why the constant rationale of why cutting corners in excavation safety is ok? It's because we have lost the fear and respect we once had for working in excavations and we have simply become complacent. It's because most of us don't have a frame of reference, meaning we haven't lost a coworker or loved one in a trench collapse. We hear the stories and go on because it won't happen to us, right? And "workers" working in unsafe excavations isn't simplified to construction workers, it's also municipal workers, pipeliners, roustabouts, electricians, plumbers, horizontal

directional drillers, any worker who has to dig into the dirt in the performance of their duties.

So why is dirt so deadly? I have said "crushed," in reference to workers dying in trench collapses, because that is exactly what happens. One cubic yard of dry, type C soil, the weakest soil, weighs approximately 2700 pounds, the approximate weight of a small car. If you add water, different types of soil, rocks, or anything else to that cubic yard of soil, the weight simply increases. It is best stated that people who die in trench collapses are crushed to death.

Staying alive in trenches is so easy, yet one of the most overlooked aspects of the construction industry. Here are some tips and reminders to stay safe while working in trenches:

1. A Competent Person shall be assigned to each excavation and must inspect the excavation at the beginning of the shift before employees enter, when there has been a change to the trench i.e. weather, or there has been a collapse of the trench wall.
2. If a trench is four feet deep, it has to have access and egress within every 25 feet of employees working in that trench. Additionally, the egress shall be so that the person exiting that trench can do so with great ease.
3. If a trench is deeper than five feet, a protective system is required. A protective system being that of sloping, shoring, shielding or benching. If a trench is less than



five feet deep, the Competent Person can deem it unsafe and require a Protective System.

4. Atmospheric testing shall be done before entering a trench.
5. Train your employees to the Excavation Standard, regardless of if they are a short service employee (SSE) or a 30 year vet!

Trench fatalities are easy to avoid, and the collapse of a trench is never an accident, it's always avoidable. It's hard to defend an employer when a trench fatality has occurred because in OSHA's eyes, a highly predictable and preventable event has

occurred...and they're right.

So, the next time you think about working in an unsafe trench, think again, because eventually there's going to be a bullet in that gun!

Stay safe friends and God Bless! 🙏

Have questions, comments or need Excavation or Competent Person Training? Call (620) 655-6254, or email ben@tristatesafetyervicesllc.com or visit www.tristatesafetyervicesllc.com and remember, "Lead Safely... Others Will Follow!!!" Follow us on Facebook and Instagram.



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Enforcement

by John Jacobi

Recently a friend asked me if I could offer my opinion regarding the effectiveness of state-level enforcement of pipeline excavation damage prevention programs. More specifically, are there fewer excavation damages to underground pipelines in states that have strong enforcement versus states that have less robust programs?

Seems like a simple question – but it is anything but simple. The first issue is what kind of pipelines? There are three kinds of hazardous liquid (49 CFR Part 195) pipelines: transmission lines, gathering lines and non-jurisdictional lines. Gas (49 CFR Part 192) pipelines are a lot more complicated. The four major categories are transmission lines, gathering lines, distribution lines (all Part 192 lines that are not transmission or gathering) and non-jurisdictional lines.

PHMSA (the US DOT's Pipeline and Hazardous Materials Safety Administration) keeps records on all jurisdictional pipelines. But the records are not consistent from year to year. Every time the PHMSA reporting forms change, the information changes and it gets more difficult to compare performance from year to year. The quantity of data is mind boggling. Making sense of it is even more mind boggling.

The Pipeline Inspection, Protection, Enforcement, and Safety (PIPES) Act of 2006, required PHMSA to establish review criteria for state excavation damage prevention law enforcement programs to allow PHMSA to conduct

enforcement against an excavator in the absence of adequate state damage prevention programs. The final rule was published July 23, 2015 (80 FR 43836 – 43868, [Docket No. PHMSA-2009-0192; Amdt. No. 196-1; 198-7]) and took effect January 1, 2016. This rule was necessary because the states are the primary enforcers of damage prevention programs and PHMSA had to determine that a state program was inadequate before going directly after violators in the affected state. If you have time, it is worth reading.

I retired from PHMSA October 31, 2012 – before the final rule was published. But I was involved in the early stages of trying to develop criteria for an “effective damage prevention program.” The final criteria are found in 49 CFR §198.55. What criteria will PHMSA use in evaluating the effectiveness of state damage prevention enforcement programs? If memory serves me, there were originally only 10 or so states that failed to meet the criteria and were at risk of losing part of their federal funding for pipeline safety programs (As an aside, the current PHMSA Guidelines for States Participating in the Pipeline Safety Program consists of 689 pages of legalese. The only two states that do not participate are Alaska and Hawaii where PHMSA exercises direct authority. All the other states get up to 80% of their eligible pipeline safety program expenses). Those that were inadequate were primarily due to lack of legislative authority at the time. Most, if not all, of the enforcement inadequacies have been corrected and I

would be surprised if any state has lost significant funding. I do believe that PHMSA-initiated excavation damage actions directly against excavators in a very few cases, but I am not familiar any final outcomes.

As of today, virtually all state excavation damage programs should meet the minimum standards set by 49 CFR §198.55.

There is no doubt, at least in my mind, that pipeline excavation damage prevention programs work. With the advent of “call before you dig,” excavation damages have generally trended downward. See PHMSA's Damage Prevention Page: <https://primis.phmsa.dot.gov/comm/DamagePrevention.htm>.

In today's litigious society, civil liability is, in my opinion, probably as significant as enforcement authority in terms of reducing excavation damage. The overwhelming majority of PHMSA and state pipeline program enforcement is “paperwork” related in that compliance with some regulatory requirement is not or has not been adequately documented. From a regulatory standpoint, if something is not documented, it did not happen. There is no excuse for the criminals that choose to ignore the rule of law and no good remedy for the victims affected. 🚔

John Jacobi retired from PHMSA. For questions or comments, email: jjacobi@sbcglobal.net



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