

Underground Facilities



Stakeholder Meeting

October 25, 2006

Stakeholder Meeting Agenda

- Welcome
- Introductions
- Why are we here?
- Next Steps!

Stakeholder Meeting Agenda

□ Why are we here?

■ HR 5678 & HR 5782

- Authorizes the U.S. Department of Transportation (DOT) to impose civil penalties if individuals do not call to check on pipelines prior to digging;
- Lists elements of an effective damage prevention protection program, along with incentives for states to adopt such programs;
- Sets deadlines for DOT to establish programs to manage low-stress pipelines and gas distribution pipelines (DIMP);
- Requires DOT to collect information related to pipeline controller fatigue;
- Requires DOT to submit a report to Congress on leak detection systems;

Stakeholder Meeting Agenda

□ Why are we here?

■ HR 5678 & HR 5782 continued;

- Requires DOT to conduct a petroleum products transportation study;
- Establishes a four-year reauthorization period;
- Requires DOT and the U.S. Department of Homeland Security to reach an agreement on jurisdiction for pipeline security; and
- Re-establishes pipeline safety information grants to local communities that were part of the 2002 Act.

Stakeholder Meeting Agenda

□ Why are we here?

■ Elements of an effective damage prevention protection program!

- Enhanced communication between operators and excavators
- Fostering support and partnership of all stakeholders in all phases of the program
- Operator's use of performance measures for persons performing locating of pipelines and pipeline construction
- Partnership in employee training
- Partnership in public education
- Enforcement agencies' role as partner and facilitator to help resolve issues
- Fair and consistent enforcement of the law

Stakeholder Meeting Agenda

- Why are we here?
 - Elements of an effective damage prevention protection program, continued!
 - Use of technology to improve all parts of the process
 - Analysis of data to continually evaluate/improve program effectiveness

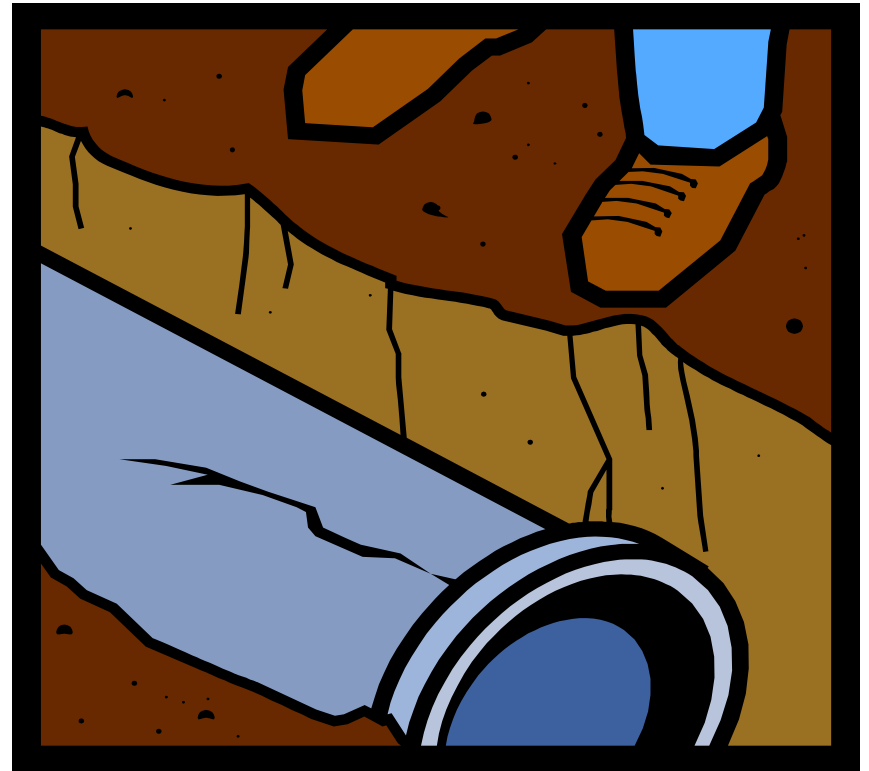
Stakeholder Meeting Agenda

□ Why are we here?

- HR 5678 and 5782 contain the following language: “In making grants under this section the Secretary shall take into consideration the commitment of each state to ensuring the effectiveness of its damage prevention program, including legislative and regulatory actions taken by the State.”
- If the Secretary of Transportation does not certify our damage prevention protection program the Pipeline and Hazardous Materials Safety Administration Inspectors will initiate preemptive enforcement.

Stakeholder Meeting Agenda

- Next Steps!
 - Rewrite Maryland Public Utility Companies Article and Relation Laws Title 12 “Underground Facilities” to bring it into conformance with HR 5678 and HR 5782 Pipeline Safety and Damage Prevention provisions.



109TH CONGRESS
2^D SESSION

H. R. 5678

To provide for enhanced safety and environmental protection in pipeline transportation, to provide for enhanced reliability in the transportation of the Nation's energy products by pipeline, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2006

Mr. YOUNG of Alaska (for himself and Mr. OBERSTAR) (both by request): introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Energy and Commerce and Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for enhanced safety and environmental protection in pipeline transportation, to provide for enhanced reliability in the transportation of the Nation's energy products by pipeline, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49,**
 2 **UNITED STATES CODE; TABLE OF CONTENTS.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
 4 “Pipeline Safety and Reliability Improvement Act of
 5 2006”.

6 (b) **AMENDMENT OF TITLE 49, UNITED STATES**
 7 **CODE.**—Except as otherwise expressly provided, whenever
 8 in this Act an amendment or repeal is expressed in terms
 9 of an amendment to, or a repeal of, a section or other
 10 provision, the reference shall be considered to be made to
 11 a section or other provision of title 49, United States
 12 Code.

13 (c) **TABLE OF CONTENTS.**—

Sec. 1. Short title; amendment of title 49, United States Code; table of con-
 tents.

Sec. 2. Pipeline safety and damage prevention.

Sec. 3. Energy transportation infrastructure reliability.

Sec. 4. Authorization of appropriations.

14 **SEC. 2. PIPELINE SAFETY AND DAMAGE PREVENTION.**

15 (a) **ONE-CALL CIVIL ENFORCEMENT.**—

16 (1) Section 60114 is amended by adding at the
 17 end a new subsection (d) to read as follows:

18 “(d) **ENFORCEMENT.**—Any person who engages in
 19 excavation activity without first using an available one-call
 20 notification system to establish the location of under-
 21 ground facilities in the excavation area, who disregards lo-
 22 cation information or markings established by a pipeline
 23 facility operator, or who fails to take reasonable steps to

1 ensure safe excavation to prevent damage to a pipeline,
2 shall be subject to any action available under this chapter,
3 including a civil action under section 60120, an adminis-
4 trative action under this chapter, including the assessment
5 of civil penalties under section 60122, and, if appropriate,
6 a criminal action under section 60123.”.

7 (2) Section 60122(a)(1) is amended in the first
8 sentence by inserting “, 60114(d),” between “section
9 60114(b)” and “or 60118(a) of this title”.

10 (b) STATE DAMAGE PREVENTION PROGRAMS.—

11 (1) Section 60105(b)(4) is amended to read as
12 follows:

13 “(4) has committed to establishing a program
14 designed to prevent damage by excavation, demoli-
15 tion, tunneling, or construction activity to the pipe-
16 line facilities to which the certification applies that
17 subjects persons who violate the applicable require-
18 ments of that program to civil penalties and other
19 enforcement actions that are substantially the same
20 as are provided under this chapter, and addresses
21 the elements in section 60134(b);”.

22 (2) Chapter 601 is amended by adding at the
23 end the following new section:

1 **“§ 60134. State damage prevention programs**

2 “(a) IN GENERAL.—In order to qualify for a grant
3 under this section, each State authority (including a mu-
4 nicipality if the agreement applies to intrastate gas pipe-
5 line transportation) having an annual certification in ac-
6 cordance with section 60105 or an agreement in accord-
7 ance with section 60106 shall have an effective damage
8 prevention program that meets the requirements of sub-
9 section (b).

10 “(b) DAMAGE PREVENTION PROGRAM ELEMENTS.—

11 An effective damage prevention program includes the fol-
12 lowing elements:

13 “(1) Participation by operators, excavators, and
14 other stakeholders in the development and imple-
15 mentation of methods for establishing and maintain-
16 ing effective communications between stakeholders
17 from receipt of an excavation notification until suc-
18 cessful completion of the excavation, as appropriate.

19 “(2) A process for fostering and ensuring the
20 support and partnership of stakeholders, including
21 excavators, operators, locators, designers, and local
22 government in all phases of the program.

23 “(3) A process for reviewing the adequacy of a
24 pipeline operator’s internal performance measures
25 regarding persons performing locating services and
26 quality assurance programs.

1 “(4) Participation by operators, excavators, and
2 other stakeholders in the development and imple-
3 mentation of effective employee training programs to
4 ensure that operators, the one-call center, the en-
5 forcing agency, and the excavators have partnered to
6 design and implement training for the employees of
7 operators, excavators, and locators.

8 “(5) A process for fostering and ensuring active
9 participation by all stakeholders in public education
10 for damage prevention activities.

11 “(6) A process for resolving disputes that de-
12 fines the State authority’s role as a partner and
13 facilitator to resolve issues.

14 “(7) Enforcement of State damage prevention
15 laws and regulations for all aspects of the excavation
16 process, including public education, and the use of
17 civil penalties for violations assessable by the appro-
18 priate State authority.

19 “(8) A process for fostering and promoting the
20 use, by all appropriate stakeholders, of improving
21 technologies that may enhance communications, un-
22 derground pipeline locating capability, and gathering
23 and analyzing information about the accuracy and
24 effectiveness of locating programs.

1 “(9) A process for review and analysis of the ef-
2 fectiveness of each program element, including a
3 means for implementing improvements identified by
4 such program reviews.

5 “(c) GRANTS TO STATES.—

6 “(1) IN GENERAL.—The Secretary may make a
7 grant of financial assistance to a State that qualifies
8 under this section to assist in improving the overall
9 quality and effectiveness of a damage prevention
10 program of a State. In making grants under this
11 section, the Secretary shall take into consideration
12 the commitment of each State to ensuring the effec-
13 tiveness of its damage prevention program, including
14 legislative and regulatory actions taken by the State.

15 “(2) APPLICATION.—If a State authority files
16 an application for a grant under this section not
17 later than September 30 of a calendar year, the Sec-
18 retary of Transportation shall review the State’s
19 damage prevention program to determine its effec-
20 tiveness. For programs determined to be effective,
21 the Secretary may make a grant of financial assist-
22 ance for the cost of the personnel, equipment, and
23 activities the authority reasonably requires during
24 the next calendar year to carry out an effective dam-
25 age prevention program as described in subsection

1 (b) of this section. A grant made under this section
2 is not subject to the section 60107(a) limitation on
3 the maximum percentage of funds to be paid by the
4 Secretary. A State authority filing an application
5 under this subsection shall demonstrate that the
6 Governor (or chief executive) has designated it as
7 the appropriate State authority to receive the grant
8 funds. Funds provided under this section may not be
9 used for lobbying or in direct support of litigation.

10 “(d) AUTHORIZATION OF APPROPRIATIONS.—To
11 carry out this section, the following amounts are author-
12 ized to be appropriated to the Secretary:

13 “(1) \$1,500,000 for fiscal year 2008 to be de-
14 rived from amounts appropriated to the Secretary
15 under section 60125(c) of this title.

16 “(2) \$1,750,000 for fiscal year 2009 to be de-
17 rived from amounts appropriated to the Secretary
18 under section 60125(c) of this title.

19 “(3) \$2,000,000 for fiscal year 2010 to be de-
20 rived from amounts appropriated to the Secretary
21 under section 60125(c) of this title.

22 Such funds shall remain available until expended.”.

23 (3) The table of sections of chapter 601 is
24 amended by adding at the end the following new
25 item:

“60134. State damage prevention programs.”.

1 (c) STATE PIPELINE SAFETY GRANTS.—Section
2 60107(a) is amended by striking “not more than 50 per-
3 cent” and inserting in its place “not more than 80 per-
4 cent”.

5 (d) DAMAGE PREVENTION TECHNOLOGY DEVELOP-
6 MENT.—Section 60114 (as amended by this section) is
7 further amended by adding at the end the following new
8 subsection:

9 “(e) TECHNOLOGY DEVELOPMENT GRANTS.—To the
10 extent and in the amount provided in advance in appro-
11 priations acts, the Secretary may make grants to any or-
12 ganization or entity (not including for-profit entities) for
13 the development of technologies that will facilitate the pre-
14 vention of pipeline damage caused by excavation activities,
15 with emphasis on wireless and global positioning tech-
16 nologies having potential for use in connection with notifi-
17 cation systems and underground facility locating and
18 marking services. If a grant is made pursuant to this sub-
19 section, the Secretary shall establish and follow appro-
20 priate procedures for awarding grants under this sub-
21 section and shall ensure that any funds granted are prop-
22 erly used. Funds provided under this subsection may not
23 be used for lobbying or in direct support of litigation. The
24 Secretary may also support such technology development

1 through cooperative agreements with trade associations,
2 academic institutions, and other qualified organizations.”.

3 (e) SAFETY ORDERS.—Section 60117(l) is amended
4 to read as follows:

5 “(l) SAFETY ORDERS.—

6 “(1) IN GENERAL.—The Secretary may make a
7 grant of financial assistance to a State that qualifies
8 under this section to assist in improving the overall
9 quality and effectiveness of a damage prevention
10 program of a State. In making grants under this
11 section, the Secretary shall take into consideration
12 the commitment of each State to ensuring the effec-
13 tiveness of its damage prevention program, including
14 legislative and regulatory actions taken by the State.

15 “(2) CONSIDERATION.—In making a determina-
16 tion under paragraph (1) of this section, the Sec-
17 retary shall, if relevant, consider—

18 “(A) the considerations specified in section
19 60112(b);

20 “(B) the likelihood that the condition will
21 impair the serviceability of a pipeline;

22 “(C) the likelihood that the condition will
23 progress over time;

1 “(D) the likelihood that the condition is
2 present or could develop on other areas of the
3 pipeline; and

4 “(E) other factors the Secretary considers
5 appropriate.”.

6 (f) GAS PIPELINE INTEGRITY REASSESSMENT.—Sec-
7 tion 60109(c)(3)(B) is amended to read as follows:

8 “(B) Subject to paragraph (5), periodic re-
9 assessment of the facility at a minimum of once
10 every 7 years, using methods described in sub-
11 paragraph (A), until the Secretary issues regu-
12 lations basing the reassessment intervals on
13 technical data, risk factors, and engineering
14 analyses.”.

15 (g) INTEGRITY PROGRAM ENFORCEMENT.—Section
16 60109(c)(9)(A)(iii) is amended to read as follows:

17 “(iii) INADEQUATE PROGRAMS.—If
18 the Secretary determines that a risk anal-
19 ysis or integrity management program does
20 not comply with the requirements of this
21 subsection or regulations issued as de-
22 scribed in paragraph (2), has not been ade-
23 quately implemented, or is inadequate for
24 the safe operation of a pipeline facility, the
25 Secretary may conduct proceedings under

1 sections 60108(a), 60112, 60118(a) and
2 (b), 60120, 60122, or any other section of
3 this chapter, to enforce the requirements.”.

4 (h) LIMITATION ON INFLATIONARY ADJUSTMENTS.—
5 Section 60122(a) is amended by adding at the end the
6 following new paragraph:

7 “(4) The maximum civil penalty amounts available
8 under this section are excepted from the inflation adjust-
9 ment requirements of section 4 of the Federal Civil Pen-
10 alties Inflation Adjustment Act of 1990, as amended by
11 the Debt Collection Improvement Act of 1996.”.

12 (i) DIRECT SALES LINES.—Subsection 60101(a) is
13 amended—

14 (1) in paragraph (6)—

15 (A) by striking “—” the first place it ap-
16 pears and all that follows through “(A) means
17 a gas pipeline” and inserting “means a gas
18 pipeline”;

19 (B) by striking subparagraph (B);

20 (C) by redesignating clauses (i) and (ii) as
21 subparagraphs (A) and (B), respectively; and

22 (D) by striking “(15 U.S.C. 717 et seq.);
23 but” and inserting “(15 U.S.C. 717 et seq.)”;

24 and

25 (2) in paragraph (9)—

1 (A) by striking “means—” and all that fol-
2 lows through “(A) a gas pipeline facility” and
3 inserting “means a gas pipeline facility”;

4 (B) by striking subparagraph (B); and

5 (C) by striking “(15 U.S.C. 717 et seq.);
6 and” and inserting “(15 U.S.C. 717 et seq.)”.

7 **SEC. 3. ENERGY TRANSPORTATION INFRASTRUCTURE RE-**
8 **LIABILITY.**

9 (a) PERMIT STREAMLINING.—

10 (1) CONSTRUCTION AND EXPANSION OF HAZ-
11 ARDOUS LIQUID PIPELINES.—

12 (A) Section 60133(e) is amended to read
13 as follows:

14 “(e) OMBUDSMAN.—The Secretary shall designate an
15 ombudsman to assist resolving disagreements between
16 Federal, State, and local agencies and pipeline operators
17 arising during agency review of pipeline repairs and haz-
18 ardous liquid pipeline construction projects in order to ex-
19 pedite pipeline projects, consistent with protection of
20 human health, public safety, and the environment.”.

21 (B) Section 60133(f) is amended by strik-
22 ing the first sentence and inserting the fol-
23 lowing: “The Secretary shall encourage States
24 and local governments to consolidate their re-
25 spective permitting processes for pipeline repair

1 and hazardous liquid pipeline construction
2 projects subject to any time periods for repairs
3 specified by rule by the Secretary.”.

4 (C) Section 60133 is further amended by
5 adding at the end the following new subsection:

6 “(g) CONSTRUCTION AND EXPANSION OF PIPE-
7 LINES.—Upon request by any person proposing to con-
8 struct or expand a hazardous liquid pipeline, the Secretary
9 may coordinate the environmental reviews and permitting
10 processes of the agencies having responsibility for issuing
11 permits or otherwise authorizing pipeline construction
12 projects if the Secretary determines that coordinating the
13 permitting processes to expedite the completion of the
14 project would be in the national interest.”.

15 (2) PIPELINE REPAIRS.—Section 60133 (as
16 amended by this subsection) is further amended by
17 adding at the end the following new subsection:

18 “(h) PRESUMPTIVE EXCLUSIONS.—

19 “(1) NEPA REVIEW.—With respect to any of
20 the activities described in paragraph (3) of this sub-
21 section, including activities on non-Federal land, if
22 the Federal agency having responsibility for con-
23 ducting environmental reviews under the National
24 Environmental Policy Act of 1969 (42 U.S.C. 4321
25 et seq.) (NEPA) determines that—

1 “(A) the proposed activity is substantially
2 similar to a pipeline repair activity for which
3 the Interagency Committee has developed or
4 adopted best practices under subsection (a)(3)
5 of this section for determining and reducing or
6 eliminating the potential for significant impacts
7 to the human environment under NEPA,

8 “(B) the proposed repair activity is con-
9 sistent with these best practices, and

10 “(C) in the absence of extraordinary cir-
11 cumstances, the proposed repair activity is not
12 likely to individually or cumulatively result in
13 significant impacts on the human environment,
14 then a Federal agency having responsibility for con-
15 ducting environmental reviews under NEPA or co-
16 ordinating the permitting process may, in consulta-
17 tion with the Council on Environmental Quality,
18 adopt categorical exclusions for those repair activi-
19 ties, and actions by those agencies regarding pipeline
20 repair permits shall be subject to a rebuttable pre-
21 sumption that the use of a categorical exclusion will
22 apply.

23 “(2) ESA REVIEW.—With respect to any of the
24 activities described in paragraph (3) of this sub-
25 section, including activities on non-Federal land, if

1 the Secretary of Interior or the Secretary of Com-
2 merce—

3 “(A) determines that a proposed activity is
4 substantially similar to a pipeline repair activity
5 for which the Interagency Committee has devel-
6 oped or adopted best practices under subsection
7 (a)(3) of this section for determining and re-
8 ducing or eliminating impacts to listed species
9 under the Endangered Species Act of 1973 (16
10 U.S.C. 1531 et seq.) (ESA),

11 “(B) concludes that if these best practices
12 are followed, the repair activity is not likely to
13 jeopardize the continued existence of any listed
14 species or adversely modify the habitat of such
15 species, and

16 “(C) concludes that the repair activity
17 would not conflict with any existing biological
18 opinion or any agreement made under the ESA
19 relating to the geographic area where the pro-
20 posed pipeline repair will occur,

21 then action by the Secretary of the Interior or the
22 Secretary of Commerce regarding pipeline repair
23 permits shall be subject to a rebuttable presumption
24 that the ESAs biological assessment and consulta-
25 tion requirements have been satisfied.

1 “(3) ACTIVITIES DESCRIBED.—The activities
2 referred to in paragraphs (1) and (2) are the fol-
3 lowing:

4 “(A) Site repairs required to ensure the in-
5 tegrity of an existing pipeline facility performed
6 entirely within an existing right-of-way corridor
7 that do not change the physical character of the
8 facility and where the facility was constructed
9 in accordance with the environmental reviews
10 and authorizations, if any, required by Federal
11 law.

12 “(B) Functional replacement of pipeline
13 equipment performed entirely within an existing
14 right-of-way corridor that does not change the
15 physical character of the facility and where the
16 facility was constructed in accordance with the
17 environmental reviews and authorizations, if
18 any, required by Federal law.”.

19 (b) INTERNATIONAL ACTIVITIES.—Section 60117 (as
20 amended by section 2 of this Act) is further amended by
21 adding at the end the following new subsection:

22 “(m) INTERNATIONAL UNIFORMITY OF STANDARDS
23 AND REQUIREMENTS.—

24 “(1) PARTICIPATION IN INTERNATIONAL FO-
25 RUMS.—Subject to guidance and direction from the

1 Secretary of State, the Secretary of Transportation
2 may participate in international forums that estab-
3 lish or recommend mandatory standards and re-
4 quirements for transporting gas and hazardous liq-
5 uids by pipeline in international commerce.

6 “(2) CONSULTATION.—The Secretary may con-
7 sult with interested authorities to ensure that, to the
8 extent practicable, regulations the Secretary pre-
9 scribes under this chapter are consistent with stand-
10 ards and requirements related to transporting gas
11 and hazardous liquids by pipeline that international
12 authorities adopt.

13 “(3) DIFFERENCES IN INTERNATIONAL STAND-
14 ARDS AND REQUIREMENTS.—If the Secretary pre-
15 scribes a standard or requirement concerning inter-
16 national transportation by pipeline, nothing in this
17 section requires that such standard be identical to a
18 standard or requirement adopted by an international
19 authority.

20 “(4) INFORMATION EXCHANGE AND TECHNICAL
21 ASSISTANCE.—Subject to guidance and direction of
22 the Secretary of State, the Secretary of Transpor-
23 tation may engage in activities to support inter-
24 national efforts to share information about the risks
25 to the public and the environment from pipelines

1 and means of protecting against those risks. The
2 Secretary may provide technical assistance to domes-
3 tic and appropriate international organizations to fa-
4 cilitate efforts to reduce or eliminate inconsistent re-
5 quirements that inhibit the safety and efficiency of
6 pipeline transportation in or affecting interstate or
7 foreign commerce.”.

8 (c) EMERGENCY PREPAREDNESS.—

9 (1) EMERGENCY WAIVERS.—Section 60118(c)
10 is amended to read as follows:

11 “(c) WAIVERS BY SECRETARY.—

12 “(1) NONEMERGENCY WAIVERS.—On applica-
13 tion of a person owning or operating a pipeline facil-
14 ity, the Secretary by order may waive compliance
15 with any part of an applicable standard prescribed
16 under this chapter on terms the Secretary considers
17 appropriate, if the waiver is not inconsistent with
18 pipeline safety. The Secretary shall state in the
19 order the reasons for granting a waiver under this
20 paragraph. The Secretary may act on a non-
21 emergency waiver only after notice and an oppor-
22 tunity for a hearing.

23 “(2) EMERGENCY WAIVERS.—The Secretary by
24 order may waive compliance with any part of an ap-
25 plicable standard prescribed under this chapter on

1 terms the Secretary considers appropriate without
2 prior notice and comment if the Secretary deter-
3 mines that the waiver is necessary to address an ac-
4 tual or impending emergency involving pipeline
5 transportation, including but not limited to emer-
6 gencies caused by natural or manmade disasters.
7 The Secretary shall state in the order the reasons
8 for granting a waiver under this paragraph.”.

9 (2) RESTORATION OF OPERATIONS.—Section
10 60301(d) is amended—

11 (A) in paragraph (1)(B), by striking
12 “and”;

13 (B) by redesignating paragraph (2) as
14 paragraph (3); and

15 (C) by inserting after paragraph (1) the
16 following new paragraph:

17 “(2) may be used for activities involving the
18 restoration of energy pipelines that have been or are
19 anticipated to become disrupted by manmade or nat-
20 ural disaster, including aid to other Federal agen-
21 cies; and”.

22 (d) PETROLEUM TRANSPORTATION CAPACITY
23 STUDY.—(1) Chapter 601 (as amended by this Act) is fur-
24 ther amended by adding at the end the following new sec-
25 tion:

1 **“§ 60135. Petroleum product transportation capacity**
2 **study**

3 “(a) IN GENERAL.—The Secretary of Transportation
4 may conduct analyses of the domestic transport of petro-
5 leum products by pipeline. Such analyses should identify
6 areas of the United States where shortages of pipeline ca-
7 pacity and reliability concerns exist, where such shortages
8 have or are anticipated to contribute to significant in-
9 creases in the price of petroleum products, or where un-
10 planned loss of individual pipelines may cause shortages
11 of petroleum products or price disruptions. For the pur-
12 pose of this section, ‘petroleum product’ means oil of any
13 kind or in any form, gasoline, diesel fuel, aviation fuel,
14 fuel oil, kerosene, any product obtained from refining or
15 processing of crude oil, liquefied petroleum gases, natural
16 gas liquids, petrochemical feedstocks, condensate, waste or
17 refuse mixtures containing any of the above, and any other
18 liquid hydrocarbon compounds.

19 “(b) CONSULTATION.—In preparing any such anal-
20 yses, the Secretary may consult with other government
21 agencies and public- and private-sector experts in pipeline
22 and other forms of petroleum product transportation, en-
23 ergy consumption, capacity, population, and economic de-
24 velopment.

25 “(c) DATA COLLECTION.—

1 “(1) The Secretary may collect information rel-
2 evant to the study from the Department of Energy’s
3 Energy Information Administration and may enter
4 into an interagency agreement for this purpose.

5 “(2) In the absence of sufficient information
6 collection by the Energy Information Administra-
7 tion, the Secretary may collect information relevant
8 to the study in any other manner.”.

9 (2) The table of sections of chapter 601 is further
10 amended by adding at the end the following new item:

 “60135. Petroleum product transportation capacity study.”.

11 (e) COST REIMBURSEMENTS.—Section 60117 (as
12 amended by section 2 of this Act and subsection (b) of
13 this section) is further amended by adding at the end the
14 following new subsection:

15 “(n) COST RECOVERY FOR DESIGN REVIEWS.—If the
16 Secretary conducts facility design safety reviews, con-
17 sulting, or field work in connection with a proposal to con-
18 struct, expand, or operate a pipeline system or liquefied
19 natural gas pipeline facility, the Secretary may require the
20 person requesting such reviews or consulting to pay the
21 associated costs incurred by the Secretary, such funds to
22 be deposited into the pipeline safety fund. Funds deposited
23 pursuant to this section are authorized to be appropriated
24 for the purposes set forth in section 60301(d). The Sec-
25 retary may assess such costs in any reasonable manner.”.

1 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) Section 60125(a) is amended to read as follows:

3 “(a) GAS AND HAZARDOUS LIQUID.—To carry out
4 this chapter (except for section 60107) related to gas and
5 hazardous liquid, the following amounts are authorized to
6 be appropriated to the Department of Transportation,
7 from fees collected under section 60301 in each respective
8 year, and from the Oil Spill Liability Trust Fund as speci-
9 fied below:

10 “(1) For fiscal year 2007, \$55,497,000, of
11 which \$39,872,000 is from fees and \$15,625,000 is
12 from the Fund.

13 “(2) For fiscal year 2008, \$57,997,000, of
14 which \$42,651,000 is from fees and \$15,346,000 is
15 from the Fund.

16 “(3) For fiscal year 2009, \$60,482,000, of
17 which \$44,839,000 is from fees and \$16,003,000 is
18 from the Fund.

19 “(4) For fiscal year 2010, \$62,375,000, of
20 which \$46,444,000 is from fees and \$15,931,000 is
21 from the Fund.”.

22 (b) Section 60125(b)(1) concerning State grants is
23 amended to read as follows:

24 “(1) To carry out section 60107 of this chapter, the
25 following amounts are authorized to be appropriated to the
26 Department of Transportation, from fees collected under

1 section 60301 in each respective year, and from the Oil
2 Spill Liability Trust Fund as specified below:

3 “(A) For fiscal year 2007, \$20,238,000, of
4 which \$17,053,000 is from fees and \$3,185,000 is
5 from the Fund.

6 “(B) For fiscal year 2008, \$23,221,000, of
7 which \$19,567,000 is from fees and \$3,654,000 is
8 from the Fund. Of the amount appropriated to carry
9 out section 60107 of this title, \$1,500,000 shall be
10 available for fiscal year 2008 for the grants to
11 States authorized in section 60134.

12 “(C) For fiscal year 2009, \$24,513,000, of
13 which \$20,656,000 is from fees and \$3,857,000 is
14 from the Fund. Of the amount appropriated to carry
15 out section 60107 of this title, \$1,750,000 shall be
16 available for fiscal year 2009 for the grants to
17 States authorized in section 60134.

18 “(D) For fiscal year 2010, \$25,855,000, of
19 which \$21,786,000 is from fees and \$4,069,000 is
20 from the Fund. Of the amount appropriated to carry
21 out section 60107 of this title, \$2,000,000 shall be
22 available for fiscal year 2010 for the grants to
23 States authorized in section 60134.”.

24 (c) Section 60125(c) is hereby repealed.

1 (d) Sections 60125(d) and 60125(e) are redesignated
2 as sections 60125(c) and 60125(d), respectively.

3 (e) Section 60125(c)(2), as redesignated by sub-
4 section (d) of this section, is amended by striking “2003
5 through 2006” and inserting “2007 through 2010”.

6 (f) Section 6107 is amended—

7 (1) in subsection (a), by striking “fiscal years
8 2003 through 2006” and inserting “fiscal years
9 2007 through 2010”; and

10 (2) in subsection (b), by striking “for fiscal
11 years 2003 through 2006” and inserting “for fiscal
12 years 2007 through 2010”.

13 (g) Section 5128 is amended—

14 (1) in subsection (a)—

15 (A) by adding at the end the following new
16 paragraph:

17 “(5) For fiscal year 2009, such sums as may be
18 necessary.”; and

19 (B) by adding at the end the following new
20 paragraph:

21 “(6) For fiscal year 2010, such sums as may be
22 necessary.”;

23 (2) in subsection (b), by striking “through
24 2008” in the introductory language and inserting
25 “through 2010”; and

1 (3) in subsection (c), by striking “through
2 2008” and inserting “through 2010”.

○

109TH CONGRESS
2^D SESSION

H. R. 5782

To amend title 49, United States Code, to provide for enhanced safety and environmental protection in pipeline transportation, to provide for enhanced reliability in the transportation of the Nation's energy products by pipeline, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 2006

Mr. YOUNG of Alaska (for himself and Mr. PETRI) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 49, United States Code, to provide for enhanced safety and environmental protection in pipeline transportation, to provide for enhanced reliability in the transportation of the Nation's energy products by pipeline, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49,**
 2 **UNITED STATES CODE; TABLE OF CONTENTS.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
 4 “Pipeline Safety Improvement Act of 2006”.

5 (b) **AMENDMENT OF TITLE 49, UNITED STATES**
 6 **CODE.**—Except as otherwise expressly provided, whenever
 7 in this Act an amendment or repeal is expressed in terms
 8 of an amendment to, or a repeal of, a section or other
 9 provision, the reference shall be considered to be made to
 10 a section or other provision of title 49, United States
 11 Code.

12 (c) **TABLE OF CONTENTS.**—

Sec. 1. Short title; amendment of title 49, United States Code; table of contents.

Sec. 2. Pipeline safety and damage prevention.

Sec. 3. Distribution integrity management program rulemaking deadline.

Sec. 4. Pipeline control management.

Sec. 5. Low-stress pipelines.

Sec. 6. Authorization of appropriations.

Sec. 7. Standards to implement NTSB recommendations.

13 **SEC. 2. PIPELINE SAFETY AND DAMAGE PREVENTION.**

14 (a) **ONE-CALL CIVIL ENFORCEMENT.**—

15 (1) **IN GENERAL.**—Section 60114 is amended
 16 by adding at the end the following:

17 “(d) **ENFORCEMENT.**—Any person who engages in
 18 excavation activity without first using an available one-call
 19 notification system to establish the location of under-
 20 ground pipeline facilities in the excavation area or who dis-
 21 regards location information or markings established by
 22 an operator of a pipeline facility, and any operator of a

1 pipeline facility who fails to respond to a location request
2 in order to prevent damage to the pipeline or fails to take
3 reasonable steps, in response to such a request, to ensure
4 accurate marking of the location of the pipeline in order
5 to prevent damage to the pipeline, shall be subject to a
6 civil action under section 60120 or assessment of a civil
7 penalty under section 60122.

8 “(e) LIMITATION.—The Secretary may not conduct
9 an enforcement proceeding under subsection (d) within the
10 boundaries of a State that has the authority to impose
11 penalties described in section 60134(b)(7) against persons
12 who violate that State’s damage prevention laws and is
13 imposing such penalties.”.

14 (2) CONFORMING AMENDMENT.—Section
15 60122(a)(1) is amended in the first sentence by in-
16 serting “, 60114(d),” after “section 60114(b)”.

17 (b) STATE DAMAGE PREVENTION PROGRAMS.—

18 (1) CERTIFICATION.—Section 60105(b)(4) is
19 amended to read as follows:

20 “(4) has agreed to take actions toward estab-
21 lishing a program designed to prevent damage by ex-
22 cavation, demolition, tunneling, or construction ac-
23 tivity to the pipeline facilities to which the certifi-
24 cation applies that subjects persons who violate the
25 applicable requirements of that program to civil pen-

1 alties and other enforcement actions that are sub-
2 stantially the same as are provided under this chap-
3 ter, and addresses the elements in section
4 60134(b);”.

5 (2) REQUIREMENT.—Chapter 601 is amended
6 by adding at the end the following new section:

7 **“§ 60134. State damage prevention programs**

8 “(a) IN GENERAL.—The Secretary may make a grant
9 to a State authority (including a municipality with respect
10 to intrastate gas pipeline transportation) to assist in im-
11 proving the overall quality and effectiveness of a damage
12 prevention program of the State authority under sub-
13 section (e) if the State authority—

14 “(1)(A) has an annual certification in accord-
15 ance with section 60105 for such fiscal year; or

16 “(B) has an agreement with the Secretary in
17 accordance with section 60106; and

18 “(2) has agreed to take actions toward estab-
19 lishing an effective damage prevention program that
20 meets the requirements of subsection (b).

21 “(b) DAMAGE PREVENTION PROGRAM ELEMENTS.—
22 An effective damage prevention program includes the fol-
23 lowing elements:

24 “(1) Participation by operators, excavators, and
25 other stakeholders in the development and imple-

1 mentation of methods for establishing and maintain-
2 ing effective communications between stakeholders
3 from receipt of an excavation notification until suc-
4 cessful completion of the excavation, as appropriate.

5 “(2) A process for fostering and ensuring the
6 support and partnership of stakeholders, including
7 excavators, operators, locators, designers, and local
8 government in all phases of the program.

9 “(3) A process for reviewing the adequacy of a
10 pipeline operator’s internal performance measures
11 regarding persons performing locating services and
12 quality assurance programs.

13 “(4) Participation by operators, excavators, and
14 other stakeholders in the development and imple-
15 mentation of effective employee training programs to
16 ensure that operators, the one-call center, the en-
17 forcing agency, and the excavators have partnered to
18 design and implement training for the employees of
19 operators, excavators, and locators.

20 “(5) A process for fostering and ensuring active
21 participation by all stakeholders in public education
22 for damage prevention activities.

23 “(6) A process for resolving disputes that de-
24 fines the State authority’s role as a partner and
25 facilitator to resolve issues.

1 “(7) Enforcement of State damage prevention
2 laws and regulations for all aspects of the damage
3 prevention process, including public education, and
4 the use of civil penalties for violations assessable by
5 the appropriate State authority.

6 “(8) A process for fostering and promoting the
7 use, by all appropriate stakeholders, of improving
8 technologies that may enhance communications, un-
9 derground pipeline locating capability, and gathering
10 and analyzing information about the accuracy and
11 effectiveness of locating programs.

12 “(9) A process for review and analysis of the ef-
13 fectiveness of each program element, including a
14 means for implementing improvements identified by
15 such program reviews.

16 “(c) FACTORS TO CONSIDER.—In making grants
17 under this section, the Secretary shall take into consider-
18 ation the commitment of each State to ensuring the effec-
19 tiveness of its damage prevention program, including legis-
20 lative and regulatory actions taken by the State.

21 “(d) APPLICATION.—If a State authority files an ap-
22 plication for a grant under this section not later than Sep-
23 tember 30 of a calendar year and demonstrates that the
24 Governor (or chief executive) of the State has designated
25 it as the appropriate State authority to receive the grant,

1 the Secretary shall review the State's damage prevention
2 program to determine its effectiveness.

3 “(e) GRANTS FOR EFFECTIVE PROGRAMS.—For a
4 program of a State authority the Secretary determines to
5 be effective, the Secretary may make a grant to the State
6 authority for the cost of the personnel, equipment, and
7 activities the State authority reasonably requires during
8 the next calendar year to carry out its damage prevention
9 program in accordance with subsection (b).

10 “(f) NONAPPLICABILITY OF LIMITATION.—A grant
11 made under this section is not subject to the section
12 60107(a) limitation on the maximum percentage of funds
13 to be paid by the Secretary.

14 “(g) LIMITATION ON USE OF FUNDS.—Funds pro-
15 vided under this section may not be used for lobbying or
16 in direct support of litigation.

17 “(h) FUNDING.—To carry out this section, the Sec-
18 retary shall make available (from amounts appropriated
19 to the Secretary under section 60125(b) for each of fiscal
20 years 2008 through 2012) the following respective
21 amounts:

22 “(1) \$1,500,000 for fiscal year 2008.

23 “(2) \$1,750,000 for fiscal year 2009.

24 “(3) \$2,000,000 for fiscal year 2010.

25 “(4) \$2,500,000 for fiscal year 2011.

1 “(5) \$3,000,000 for fiscal year 2012.
2 Such funds shall remain available until expended.”.

3 (3) CLERICAL AMENDMENT.—The analysis for
4 chapter 601 is amended by adding at the end the
5 following:

“60134. State damage prevention programs.”.

6 (c) STATE PIPELINE SAFETY GRANTS.—Section
7 60107(a) is amended by striking “not more than 50 per-
8 cent” and inserting “not more than 80 percent”.

9 **SEC. 3. DISTRIBUTION INTEGRITY MANAGEMENT PRO-**
10 **GRAM RULEMAKING DEADLINE.**

11 Section 60109 of title 49, United States Code, is
12 amended by adding at the end the following:

13 “(e) DISTRIBUTION INTEGRITY MANAGEMENT PRO-
14 GRAMS.—

15 “(1) MINIMUM STANDARDS.—Not later than 1
16 year after the date of enactment of this subsection,
17 the Secretary shall prescribe minimum standards for
18 integrity management programs for distribution
19 pipelines.

20 “(2) ADDITIONAL AUTHORITY OF SEC-
21 RETARY.—In carrying out this subsection, the Sec-
22 retary may require operators of distribution pipe-
23 lines to continually identify and assess risks on their
24 distribution lines, to remediate conditions that

1 present a potential threat to line integrity, and to
2 monitor program effectiveness.

3 “(3) EXCESS FLOW VALVES.—The minimum
4 standards shall include criteria for requiring opera-
5 tors of natural gas distribution systems—

6 “(A) to install excess flow valves on single-
7 family residential service lines that are installed
8 or replaced after the date of enactment of this
9 subsection on the basis of feasibility and risk
10 analysis; and

11 “(B) to report to the Secretary annually
12 on the number of excess flow valves installed on
13 their systems under subparagraph (A).

14 “(4) APPLICABILITY.—The Secretary shall de-
15 termine which distribution pipelines will be subject
16 to the minimum standards.

17 “(5) DEVELOPMENT AND IMPLEMENTATION.—
18 Each operator of a distribution pipeline that Sec-
19 retary determines is subject to the minimum stand-
20 ards prescribed by the Secretary under this sub-
21 section shall develop and implement an integrity
22 management program in accordance with those
23 standards.”.

1 **SEC. 4. PIPELINE CONTROL MANAGEMENT.**

2 (a) STANDARDS.—Not later than 18 months after the
3 date of enactment of this Act, the Secretary of Transpor-
4 tation shall issue regulations establishing standards for
5 managing gas and hazardous liquid pipelines to reduce
6 risks associated with human factors, including fatigue.

7 (b) RISK EVALUATION.—In carrying out this section,
8 the Secretary may require operators of gas and hazardous
9 liquid pipelines to evaluate the risks associated with
10 human factors, including fatigue, and take measures to
11 reduce such risks with respect to their pipelines.

12 (c) APPLICABILITY.—The Secretary shall determine
13 which pipelines are subject to the standards issued under
14 this section.

15 (d) RISK MANAGEMENT.—Each operator of a pipe-
16 line that the Secretary determines is subject to the stand-
17 ards established by the Secretary under this section shall
18 manage the control of the pipeline in accordance with
19 those standards.

20 **SEC. 5. LOW-STRESS PIPELINES.**

21 Section 60102(k) of title 49, United States Code, is
22 amended to read as follows:

23 “(k) LOW-STRESS HAZARDOUS LIQUID PIPE-
24 LINES.—

25 “(1) MINIMUM STANDARDS.—Not later than 1
26 year after the date of enactment of this paragraph,

1 the Secretary shall issue minimum standards for the
2 transportation of hazardous liquids by low-stress
3 pipelines located in proximity to areas unusually sen-
4 sitive to environmental damage as defined by the
5 Secretary under section 60109(b) and by regulation.

6 “(2) LOW-STRESS PIPELINE DEFINED.—For
7 purposes of this subsection, a ‘low-stress pipeline’
8 means a hazardous liquid pipeline that is operated
9 in its entirety at a stress level of 20 percent or less
10 of the specified minimum yield strength of the line
11 pipe of the pipeline and has a diameter of greater
12 than 8⁵/₈ inches.

13 “(3) APPLICABILITY.—The Secretary shall de-
14 termine which low-stress pipelines are subject to the
15 minimum standards issued under this subsection.

16 “(4) REQUIREMENT.—Each operator of a low-
17 stress pipeline that the Secretary determines is sub-
18 ject to the minimum standards issued by the Sec-
19 retary under this subsection shall operate the pipe-
20 line in accordance with those standards.”.

21 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

22 (a) GAS AND HAZARDOUS LIQUID.—Section
23 60125(a) is amended to read as follows:

24 “(a) GAS AND HAZARDOUS LIQUID.—To carry out
25 this chapter (except for section 60107) related to gas and

1 hazardous liquid, the following amounts are authorized to
2 be appropriated to the Department of Transportation:

3 “(1) For fiscal year 2007, \$55,497,000, of
4 which \$39,872,000 is to be derived from user fees
5 collected under section 60301 and \$15,625,000 is to
6 be derived from the Oil Spill Liability Trust Fund
7 established by section 9509 of the Internal Revenue
8 Code of 1986.

9 “(2) For fiscal year 2008, \$57,997,000, of
10 which \$42,651,000 is to be derived from such fees
11 and \$15,346,000 is to be derived from the Fund.

12 “(3) For fiscal year 2009, \$60,482,000, of
13 which \$44,839,000 is to be derived from such fees
14 and \$16,003,000 is to be derived from the Fund.

15 “(4) For fiscal year 2010, \$62,375,000, of
16 which \$46,444,000 is to be derived from such fees
17 and \$15,931,000 is to be derived from the Fund.

18 “(5) For fiscal year 2011, \$62,375,000, of
19 which \$46,444,000 is to be derived from such fees
20 and \$15,931,000 is to be derived from the Fund.

21 “(6) For fiscal year 2012, \$62,375,000, of
22 which \$46,444,000 is to be derived from such fees
23 and \$15,931,000 is to be derived from the Fund.”.

24 (b) STATE GRANTS.—Section 60125(b)(1) is amend-
25 ed to read as follows:

1 “(1) To carry out section 60107, the following
2 amounts are authorized to be appropriated to the Depart-
3 ment of Transportation:

4 “(A) For fiscal year 2007, \$20,238,000, of
5 which \$17,053,000 is to be derived from user fees
6 collected under section 60301 and \$3,185,000 is to
7 be derived from the Oil Spill Liability Trust Fund.

8 “(B) For fiscal year 2008, \$23,221,000, of
9 which \$19,567,000 is to be derived from such fees
10 and \$3,654,000 is to be derived from the Fund. Of
11 the amounts so appropriated, \$1,500,000 shall be
12 available for grants to States under section 60134.

13 “(C) For fiscal year 2009, \$24,513,000, of
14 which \$20,656,000 is to be derived from such fees
15 and \$3,857,000 is to be derived from the Fund. Of
16 the amount so appropriated, \$1,750,000 shall be
17 available for grants to States under section 60134.

18 “(D) For fiscal year 2010, \$25,855,000, of
19 which \$21,786,000 is to be derived from such fees
20 and \$4,069,000 is to be derived from the Fund. Of
21 the amount so appropriated, \$2,000,000 shall be
22 available for grants to States under section 60134.

23 “(E) For fiscal year 2011, \$25,855,000, of
24 which \$21,786,000 is to be derived from such fees
25 and \$4,069,000 is to be derived from the Fund. Of

1 the amount so appropriated, \$2,000,000 shall be
2 available for grants to States under section 60134.

3 “(F) For fiscal year 2012, \$25,855,000, of
4 which \$21,786,000 is to be derived from such fees
5 and \$4,069,000 is to be derived from the Fund. Of
6 the amount so appropriated, \$2,000,000 shall be
7 available for grants to States under section 60134.”.

8 (c) CONFORMING AMENDMENTS.—Section 60125 is
9 amended—

10 (1) by striking subsection (c); and

11 (2) by redesignating subsections (d) and (e) as
12 subsections (c) and (d), respectively.

13 (d) EMERGENCY RESPONSE GRANTS.—Section
14 60125(c)(2) (as redesignated by subsection (c)(2) of this
15 section) is amended by striking “2003 through 2006” and
16 inserting “2007 through 2012”.

17 (e) ONE-CALL NOTIFICATION PROGRAMS.—Section
18 6107 is amended—

19 (1) in subsection (a) by striking “fiscal years
20 2003 through 2006” and inserting “fiscal years
21 2007 through 2012”; and

22 (2) in subsection (b) by striking “for fiscal
23 years 2003 through 2006” and inserting “for fiscal
24 years 2007 through 2012”.

1 **SEC. 7. STANDARDS TO IMPLEMENT NTSB RECOMMENDA-**
2 **TIONS.**

3 Not later than 18 months after the date of enactment
4 of this Act, the Secretary of Transportation shall issue
5 standards that implement the following recommendations
6 contained in the National Transportation Safety Board's
7 report entitled "Supervisory Control and Data Acquisition
8 (SCADA) in Liquid Pipelines" and adopted November 29,
9 2005:

10 (1) Implementation of the American Petroleum
11 Institute's Recommended Practice 165 for the use of
12 graphics on the supervisory control and data acquisi-
13 tion screens.

14 (2) Implementation of a standard for pipeline
15 companies to review and audit alarms on monitoring
16 equipment.

17 (3) Implementation of standards for pipeline
18 controller training that include simulator or non-
19 computerized simulations for controller recognition
20 of abnormal pipeline operating conditions, in par-
21 ticular, leak events.

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TITLE 12.
UNDERGROUND FACILITIES.

§ 12-101. Definitions.

(a) *In general.* - In this subtitle the following words have the meanings indicated.

(b) *Contractor.* - (1) "Contractor" means a person that performs excavations or demolitions.

(2) "Contractor" includes a person that performs excavations or demolitions under a contract or subcontract.

(c) *Demolition.* - "Demolition" means an operation in which a structure or mass of material is wrecked, razed, rendered, moved, or removed using any tool, equipment, or explosive.

(d) *Excavation.* - (1) "Excavation" means an operation in which earth, rock, or other material in or on the ground is moved, removed, or otherwise displaced by using any tool, equipment, or explosive.

(2) "Excavation" includes grading, trenching, digging, ditching, drilling, auguring, tunneling, scraping, cable or pipe plowing and driving a mass of material.

(e) *One-call system.* - "One-call system" means a communications [network] **SYSTEM** in the State [that] **WHICH PROVIDES A MEANS FOR PERSONS TO NOTIFY OWNER-MEMBERS OF PLANNED EXCAVATION OR DEMOLITION AND WHICH MAINTAINS AN OWNER-CONTRACTOR INFORMATION EXCHANGE SYSTEM. MEANS OF NOTIFICATION MAY INCLUDE:**

[(1) allows a person to telephone a one-number utility protection system;]

[(2) provides a toll-free number for persons to call and notify owner-members of planned excavation or demolition; and]

[(3) maintains an owner-contractor information exchange system.]

(1) **TOLL FREE NUMBER;**

(2) **811 ABBREVIATED DIALING CODE;**

(3) **AN INTERACTIVE INTERNET TICKET REQUEST.**

(f) *Owner.* - (1) "Owner" means a person that:
(i) owns or operates an underground facility; and
(ii) has the right to bury an underground facility.
(2) "Owner" includes:

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- (i) a public utility;
- (ii) a telecommunications corporation;
- (iii) a cable television corporation;
- (iv) a political subdivision;
- (v) a municipal corporation;
- (vi) a steam heating company; and
- (vii) an authority.

[(g) *Owner-contractor information exchange system.* – “Owner-contractor information exchange system” means an automated voice response unit maintained as a part of a one-call system.]

[(h)] **(g)** *Owner-member.* – Owner-member means an owner that participates as a member in a one-call system.

- [(i)] **(h)** *Person.* - (1) "Person" has the meaning stated in § 1-101 of this article.
(2) "Person" includes"
(i) a municipal corporation; and
(ii) a governmental unit, department, or agency.

(i) OWNER-CONTRACTOR INFORMATION EXCHANGE SYSTEM. – AN OWNER-CONTRACTOR INFORMATION EXCHANGE SYSTEM MEANS AN AUTOMATED VOICE RESPONSE UNIT AND/OR INTERACTIVE INTERNET ACCESS THAT IS MAINTAINED AS PART OF A ONE-CALL SYSTEM AND FUNCTIONS AS DESCRIBED IN § 12-107.

(j) *Underground facility.* - (1) "Underground facility" means personal property that is to be buried or submerged for:

(i) use in connection with the storage or conveyance of water, sewage, oil, gas, or other substances; or

(ii) transmission or conveyance of electronic, telephonic, or telegraphic communications or electricity.

(2) "Underground facility" includes pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those portions of poles below ground.

(3) "Underground facility" does not include a stormwater drain.

§ 12-102. Legislative intent.

It is the intent of the General Assembly to protect underground facilities [of owners] from destruction, damage, or dislocation to prevent:

- (1) death or injury to individuals;
- (2) property damage to private and public property; and
- (3) the loss of services provided to the general public.

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§ 12-103. Scope of subtitle.

This subtitle does not apply to an excavation or demolition performed or to be performed by an owner of a private residence when the excavation or demolition is performed or to be performed entirely on the land on which the private residence of the owner is located.

§ 12-104. Effect of subtitle.

(a) *In general.* – Except as provided in subsections (b) and (c) of this section, a person that obtains the information required under this subtitle is not excused from:

- (1) performing an excavation or demolition in a careful and prudent manner; and
- (2) liability for damages or injury that results from the excavation or demolition.

(b) *Effect of failure to comply.* - If an underground facility is damaged by a person that fails to comply with this subtitle, the person is deemed negligent and is liable to the owner for the total cost of repair of the underground facility, unless the owner has failed to become an owner-member in accordance with [§12-109(b)] **§ 12-109(a)** of this subtitle.

(c) *Effect of failure to become an owner-member.* - If an underground facility is damaged by a person who is in compliance with this subtitle and the owner has failed to become an owner-member in accordance with [§12-109(b)] **§12-109(a)** of this subtitle::

- (1) the person is not liable to the owner for the cost of repair of the underground facility; and
- (2) the owner is liable for any repairs or restoration of property damaged by the excavation or demolition.

(d) *Recovery of Damages.* – Subsection (c) of this section may not be construed to interfere with the right of:

- (1) a third party to recover damages arising out of the excavation or demolition from the person or from the owner; or
- (2) the person to seek contribution from an owner for damages sought by a third party under paragraph (1) of this subsection.

§ 12-105. Emergency excavation or demolition.

(a) *In general.* – [Subject to § 12-104(b) of this subtitle, if all reasonable precautions have been taken to protect underground facilities, § 12-104(a) of this subtitle and §§ 12-106 through 12-113 of this subtitle] **THE NOTIFICATION REQUIREMENTS UNDER §12-108** do not apply to an emergency excavation or demolition being performed to prevent **AN IMMEDIATE** danger to life, health, or property.

(b) *Requirements.* - A person performing an emergency excavation or demolition to prevent danger to life, health, or property shall:

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(1) take all reasonable precautions to protect underground facilities in and near the excavation or demolition area; and

(2) promptly notify [each owner of an underground facility in and near] **THE ONE-CALL SYSTEM TO INFORM EACH APPROPRIATE OWNER-MEMBER OF** the excavation or demolition area.

§ 12-106. One-call system registration and certification requirements; owner-contractor information exchange system.

(a) *In general.* - Except as provided in subsection (b) of this section, a person that operates a one-call system in the State shall register with and obtain certification to operate from the Commission.

(b) *Exception.* - A person operating a one-call system on or before July 1, 1990, is automatically registered with and certified by the Commission to continue to operate.

(c) *Owner-contractor information exchange system.* – (1) The operator of a one-call system shall install and make available an owner-contractor information exchange system in its one-call center in the State.

(2) The owner-contractor information exchange system shall be available to any caller at all times.

(d) *Authority of Commission.* - The Commission may grant, amend, or revoke the certification of a person operating a one-call system.

§ 12-107. [Time] TIMES FOR NOTIFICATION AND for beginning excavation or demolition.

[A person may not begin an excavation or demolition unless the marking required under this subtitle has been completed or the person has received notice from each owner or the one-call system that marking is unnecessary.]

(a) **IN GENERAL. – ALL TIME PERIODS USED IN THIS SECTION SHALL BE CALCULATED FROM THE TIME OF THE ORIGINAL NOTIFICATION TO THE ONE-CALL SYSTEM. IN ADDITION, ALL TIME PERIODS EXCLUDE SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS.**

(b) **NOTIFICATION. – EXCEPT IN THE CASE OF AN EMERGENCY AS DESCRIBED IN §12-105, OR, IF INFORMED BY THE ONE-CALL SYSTEM THAT NO OWNER-MEMBERS ARE TO BE NOTIFIED, A PERSON SHALL WAIT AT LEAST 48 HOURS FOLLOWING NOTIFICATION BEFORE COMMENCING WORK. THE PERSON MAY COMMENCE WORK AFTER 48 HOURS ONLY IF THE PERSON CONTACTS THE OWNER-**

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CONTRACTOR INFORMATION EXCHANGE SYSTEM AND CONFIRMS THAT ALL APPLICABLE OWNER-MEMBERS HAVE EITHER MARKED THEIR UNDERGROUND FACILITY LOCATIONS OR REPORTED THAT NO UNDERGROUND FACILITIES ARE PRESENT IN THE VICINITY OF THE EXCAVATION OR DEMOLITION.

(c) **RENOTIFICATION. - IF AN OWNER-MEMBER FAILS TO RESPOND TO THE OWNER-CONTRACTOR INFORMATION EXCHANGE SYSTEM WITHIN 48 HOURS OF THE ORIGINAL NOTIFICATION, THE PERSON SHALL WAIT AN ADDITIONAL 24 HOURS BEFORE COMMENCING WORK. IN ADDITION, THE ONE-CALL SYSTEM SHALL RENOTIFY ANY OWNER-MEMBER WHO HAS FAILED TO RESPOND TO THE OWNER-CONTRACTOR INFORMATION EXCHANGE SYSTEM WITHIN 48 HOURS FROM THE ORIGINAL NOTIFICATION. OWNER-MEMBERS WHO ARE RENOTIFIED SHALL REPORT TO THE OWNER-CONTRACTOR INFORMATION EXCHANGE SYSTEM, WITHIN 24 HOURS, THAT FACILITIES HAVE BEEN MARKED OR THAT NO FACILITIES ARE PRESENT IN THE VICINITY OF THE PLANNED EXCAVATION OR DEMOLITION. IF AN OWNER-MEMBER FAILS TO RESPOND WITHIN THE 24 HOUR RENOTIFICATION PERIOD, THE PERSON MAY PROCEED WITH EXCAVATION OR DEMOLITION SUBJECT TO THE REQUIREMENTS OF §12-108.**

(d) **EVIDENCE OF UNMARKED FACILITIES. – IF A PERSON FINDS CLEAR EVIDENCE OF UNMARKED FACILITIES IN THE AREA OF THE PLANNED EXCAVATION, THE PERSON SHALL NOT BEGIN EXCAVATING UNTIL THREE HOURS AFTER AN ADDITIONAL CALL IS MADE TO THE ONE-CALL SYSTEM SERVING THE AREA. OWNER-MEMBERS SHALL RESPOND WITHIN 3 HOURS OF THE PERSON’S CALL TO THE ONE-CALL SYSTEM.**

§ 12-108. Requirements of persons performing excavation or demolition.

(a) *Notification.* - Excluding Saturdays, Sundays, and legal holidays, at least 48 hours, but not more than 10 working days before starting an excavation or demolition, a person that intends to perform an excavation or demolition in the State shall notify [by telephone, either directly or through a] **THE** one-call system **SERVING THE GEOGRAPHIC AREA OF THE PLANNED EXCAVATION OR DEMOLITION**[, each owner] of the person's intent to perform an excavation or demolition.

(b) [*Renotification.*] **UPDATE.** - A person shall repeat the notification required under subsection (a) of this section if:

[(1) the excavation or demolition did not begin within 10 working days; or]

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[(2)] **(1)** [the excavation or demolition is to be expanded beyond its original location.]
THE EXCAVATION OR DEMOLITION DID NOT BEGIN WITHIN 10 WORKING DAYS OF THE ORIGINAL NOTIFICATION TO THE ONE-CALL SYSTEM.

(2) EXPANSION OF PLANNED EXCAVATION. - A PERSON SHALL REPEAT THE NOTIFICATION REQUIRED UNDER SUBSECTION (a) OF THIS SECTION IF THE EXCAVATION OR DEMOLITION IS TO BE EXPANDED BEYOND ITS ORIGINAL LOCATION.

[(c) *Notification from all applicable owners.* – A person may begin excavation or demolition only if the person contacts or receives notification from the owner-contractor information exchange system of the one-call system confirming that all applicable owners have either marked their underground facilities or reported that they have no underground facilities in the vicinity of the excavation or demolition.]

[(d)] **(c) Duty of care.** - A person shall exercise due care to avoid interference with or damage to an underground facility that an owner has marked in accordance with [§ 12-110] §12-109 of this subtitle. **IF EXCAVATION OR DEMOLITION IS REQUIRED WITHIN 18 INCHES ON EITHER SIDE OF A FACILITY MARKING, IT SHALL BE PERFORMED BY HAND OR BY VACUUM EXCAVATION EQUIPMENT UNTIL THE MARKED FACILITIES ARE EXPOSED. IN PAVED AREAS, MECHANICAL EQUIPMENT MAY BE USED TO BREAK THROUGH THE PAVED SURFACE.**

[(e)] **(d) Damage to or disturbance of underground facility.** - The person performing an excavation or demolition immediately shall notify the owner of the facility if the person discovers or causes any damage to or dislocation or disturbance of an underground facility in connection with any excavation or demolition.

(e) MAINTENANCE OF DESIGNATED MARKER. – AFTER AN OWNER-MEMBER HAS MARKED THE LOCATION OF AN UNDERGROUND FACILITY, IN ACCORDANCE WITH § 12-109, THE PERSON IS RESPONSIBLE FOR MAINTENANCE OF THE DESIGNATED MARKER. IF A MARKER IS OBLITERATED DESTROYED, OR REMOVED, THE PERSON SHALL REPEAT THE NOTIFICATION IN SUBSECTION (a) OF THIS SECTION.

§ 12-109. Requirements of owners - In general.

[(a)] **(a) Filing of notice for calls.** - Each owner shall file notice with and submit to the Commission in writing the telephone number of the person in each county to which calls concerning proposed excavations or demolitions are to be directed.]

[(b)] **(a) Membership in one-call system.** - Each owner shall be a member of a one-call system that has [filed a telephone number with the Commission on behalf of all owner-members.]**REGISTERED WITH AND OBTAINED CERTIFICATION TO OPERATE FROM THE COMMISSION. MUNICIPALITIES WITH POPULATIONS OF LESS**

THAN 3,000 PERSONS SHALL BE EXEMPT FROM PAYMENT OF ANY SERVICE FEES TO THE ONE-CALL SYSTEM.

[(c) *Time for determination.* – Excluding Saturdays, Sundays, and legal holidays, within 48 hours after receiving notice from a person under § 12-108 of this subtitle, an owner shall determine if a proposed excavation or demolition:

(1) is within 5 feet of the horizontal plane of an underground facility; or

(2) because of planned blasting, is in such proximity to an underground facility that the underground facility may be damaged or disturbed.]

[(d) *Notice of determination.* - Excluding Saturdays, Sundays, and legal holidays, within 48 hours after receiving the person's notice under § 12-108 of this subtitle, an owner that determines under subsection (c) of this section that an underground facility may be damaged or disturbed shall notify the person of the determination.]

[(e) *Time for performing excavation or demolition.* - An owner that elects to perform a proposed excavation or demolition shall perform the excavation or demolition around the underground facility in a timely manner.]

(b) **MARKING FACILITY LOCATION. - AN OWNER-MEMBER SHALL MARK THE LOCATION OF AN UNDERGROUND FACILITY WITHIN 18 INCHES ON A HORIZONTAL PLANE ON EITHER SIDE OF THE UNDERGROUND FACILITY, IF THE OWNER-MEMBER HAS DETERMINED THAT ITS UNDERGROUND FACILITY MAY BE DAMAGED OR DISTURBED BY A PROPOSED EXCAVATION OR DEMOLITION.**

(c) **TIME FOR MARKING AND REPORTING. - IN ACCORDANCE WITH THE NOTIFICATION SCHEDULE SET FORTH IN §12-107 OF THIS SUBTITLE, AN OWNER-MEMBER SHALL MARK THE LOCATION OF ITS UNDERGROUND FACILITIES, AND REPORT TO THE OWNER-CONTRACTOR INFORMATION EXCHANGE THAT ITS FACILITIES HAVE BEEN MARKED WITHIN 48 HOURS OF A PERSON'S NOTIFICATION TO A ONE-CALL SYSTEM. IF NO UNDERGROUND FACILITIES ARE PRESENT IN THE VICINITY OF THE PLANNED EXCAVATION OR DEMOLITION, THE OWNER-MEMBER SHALL REPORT TO THE INFORMATION EXCHANGE SYSTEM THAT NO MARKING IS NEEDED.**

(d) **EXTENSION OF TIME. - IF, DUE TO EXTRAORDINARY CIRCUMSTANCES, AN OWNER-MEMBER IS UNABLE TO MARK THE LOCATION OF ITS UNDERGROUND FACILITIES WITHIN 72 HOURS, THE OWNER-MEMBER SHALL DIRECTLY NOTIFY THE PERSON AND, UNLESS A LONGER MARKING TIME IS OTHERWISE AGREED UPON, THE PERSON MAY BEGIN EXCAVATION OR DEMOLITION.**

(e) **MARKING BY COLOR STANDARDS. - IN MARKING THE APPROXIMATE LOCATION OF UNDERGROUND FACILITIES, THE OWNER-MEMBER SHALL FOLLOW AMERICAN PUBLIC WORKS ASSOCIATION AND**

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NATIONAL UTILITY LOCATING CONTRACTORS ASSOCIATION MARKING STANDARDS. SHOULD THESE STANDARDS BE AMENDED, THE AMENDED STANDARDS SHALL BE APPLIED AND FOLLOWED. WHERE TWO OR MORE OWNER-MEMBERS SHARE THE SAME COLOR STANDARD, EACH SHALL INCLUDE ITS IDENTITY WITH THE MARKINGS.

- (f) **TRAINING OF LOCATORS. - INDIVIDUALS MARKING THE LOCATION OF UNDERGROUND FACILITIES SHALL HAVE SUCCESSFULLY COMPLETED TRAINING IN THE NULCA LOCATOR TRAINING STANDARDS AND PRACTICES, 2001, AS AMENDED. DOCUMENTATION OF THIS TRAINING SHALL BE MAINTAINED.**

[§ 12-110. Same - Marking of location of underground facility.]

[(a) In general. - An owner shall mark the location of an underground facility within 18 inches on a horizontal plane on either side of the underground facility if the owner has determined under § 12-109 of this subtitle that a proposed excavation or demolition;

(1) is within 5 feet of the horizontal plane of the underground facility; or

(2) because of planned blasting, is in such proximity to an underground facility that the underground facility may be damaged or disturbed.]

[(b) *Time of marking.* - Excluding Saturdays, Sundays, and legal holidays, if an owner cannot complete the marking under subsection (a) of this section within 48 hours after a determination under § 12-109 of this subtitle, the owner shall notify the person of the date and time when the location will be marked.]

[(c) *Color code.* - When marking the location of an underground facility, an owner shall use the following color code:

UTILITY TYPE AND PRODUCT	SPECIFIC GROUP IDENTIFYING COLOR
Electric power distribution and transmission	Safety red
Municipal electric systems	Safety red
Gas distribution and transmission	High visibility Safety yellow
Oil distribution and transmission	High visibility Safety yellow
Dangerous materials, product lines, and steam lines	High visibility Safety yellow
Telephone and telecommunications	Safety alert orange
Cable television	Safety alert orange
Water systems	Safety precaution blue

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Sewer lines

Safety green.]

[(d) *Exceptions.* - Excluding Saturdays, Sundays, and legal holidays, within 48 hours after receiving notice from a person under § 12-108 of this subtitle, an owner shall notify the person that marking is unnecessary if the owner determines that:

- (1) the owner does not have an underground facility at the location stated in the notice;
- (2) the proposed excavation or demolition is not planned within 5 feet of the horizontal plane of an underground facility; or
- (3) the proposed excavation or demolition to be performed by blasting is not planned in such proximity to an underground facility that the underground facility may be damaged or disturbed.]

[(e) *Maintenance of designated marker.* - After an owner has marked the location of an underground facility in accordance with this section, the person solely is responsible for the maintenance of the designated marker.]

[(f) *Re-marking.* - If a marker is obliterated, destroyed, or removed, an owner shall re-mark the location of the underground facility not more than 48 hours, excluding Saturdays, Sundays, and legal holidays, after receiving a request to re-mark the location.]

[(g) *Notification.* - (1) (i) No later than 48 hours after a person notifies the one-call system of proposed excavation or demolition, the owner or person acting on the owner's behalf, after taking all action required by this section to identify the owner's underground facilities in the vicinity of the proposed excavation or demolition, shall notify the owner-contractor information exchange system of whether the location is marked or clear of the owner's underground facilities.

- (ii) Notification under this subsection that the location is clear of the owner's underground facilities constitutes notice by the owner required under subsection (d) of this section.
- (2) The one-call center shall repeat notification to any owner who has failed to respond to the owner-contractor information exchange system within 48 hours after the original notification under paragraph (1) of this section.]

§ 12-11[1] 0 Reimbursement of political subdivision or municipal corporation.

(a) *Marking fee authorized.* - A political subdivision or municipal corporation may charge, assess, or collect from a person a one-time initial marking fee not exceeding \$35 for reimbursement of expenses that the political subdivision or municipal corporation incurs to comply with this subtitle.

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(b) *Re-marking fee authorized.* - If re-marking is requested, or is required after renotification under § 12-108(b) of this subtitle, a political subdivision or municipal corporation may charge, assess, or collect from a person a re-marking fee not exceeding \$15 for reimbursement of expenses that the political subdivision or municipal corporation incurs to comply with this subtitle.

§ 12-11[2] 1. Injunctive actions.

(a) *Authorized.* - To stop or prevent a negligent or unsafe excavation or demolition, an owner, **THE MARYLAND PUBLIC SERVICE COMMISSION**, or the Attorney General may file an action for a writ of mandamus or injunction in a court of competent jurisdiction in Baltimore City or the county in which the excavation or demolition is being performed or is to be performed or in which the person resides or has its principal place of business, if the person:

(1) is performing an excavation or demolition in a negligent or unsafe manner that has resulted in or is likely to result in damage to an underground facility; or

(2) is intending to use procedures to carry out the excavation or demolition that are likely to result in damage to an underground facility.

(b) *Joinder of parties.* - (1) To make its judgment or processes effective, the court may join as parties any persons necessary or proper.

(2) If appropriate, the court shall issue a final order granting the injunction or writ of mandamus.

§ 12-11[3] 2. Civil penalties.

(a) *In general.* - [A person that performs an excavation or demolition without first providing the notice required under § 12-108 of this subtitle and damages, dislocates, or disturbs an underground facility is deemed negligent and is subject to a civil penalty not exceeding \$1,000 for the first offense and \$1,000 for each subsequent offense or ten times the cost of repairs to the underground facility caused by the damage, dislocation, or disturbance.]

VIOLATIONS OF THIS SUBTITLE ARE SUBJECT TO FINES TO BE DETERMINED BY THE COMMISSION, BUT NOT TO EXCEED \$1,000 FOR THE FIRST OFFENSE AND \$5,000 FOR EACH SUBSEQUENT OFFENSE. THE COMMISSION MAY PRESCRIBE DAMAGE PREVENTION TRAINING IN LIEU OF MONETARY FINES.

[(b) *Action to recover.* - An action to recover a civil penalty under this section shall be brought by an owner of a damaged, dislocated, or disturbed underground facility or the Attorney General in a court of competent jurisdiction in Baltimore City or the county in which the damage, dislocation, or disturbance occurred.]

(b) IF THE STAFF OF THE MARYLAND PUBLIC SERVICE COMMISSION (“STAFF”) FINDS THAT A VIOLATION OF TITLE 12 OF THE MARYLAND PUBLIC UTILITY COMPANIES ARTICLE HAS OCCURRED OR IS CONTINUING, A WRITTEN NOTICE OF PROBABLE VIOLATION (“NOPV”) MAY BE ISSUED TO THE PERSON ALLEGED TO HAVE COMMITTED THE VIOLATION. THE NOPV SHALL INCLUDE:

- (1) THE FACTUAL AND STATUTORY BASIS FOR ISSUANCE OF THE NOPV;**
- (2) THE PROPOSED AMOUNT OF CIVIL PENALTY. STAFF MAY PRESCRIBE DAMAGE PREVENTION TRAINING IN LIEU OF MONETARY FINES.**

WITHIN 30 DAYS FROM THE DATE OF RECEIPT OF THE NOPV, THE PERSON ALLEGED TO HAVE COMMITTED THE VIOLATION SHALL EITHER REMIT THE PENALTY OR PROVIDE A WRITTEN REQUEST FOR RECONSIDERATION OF ISSUANCE OF THE NOPV. THE WRITTEN REQUEST SHALL CONTAIN DETAILED INFORMATION THAT SUBSTANTIATES THE REQUEST FOR RECONSIDERATION. IF A COMPROMISE IS ACHIEVABLE BETWEEN STAFF AND THE PERSON ALLEGED TO HAVE COMMITTED THE VIOLATION, THEN THE ISSUE WILL BE RESOLVED WITH A CONSENT AGREEMENT BETWEEN THE PARTIES. WITHIN 30 DAYS FROM THE DATE OF RECEIPT OF STAFF’S POSITION ON A WRITTEN REQUEST FOR RECONSIDERATION, THE PERSON ALLEGED TO HAVE COMMITTED THE VIOLATION MAY REQUEST AN ADJUDICATORY HEARING BEFORE THE COMMISSION.

(c) *Disposition of funds.* - All civil penalties recovered [in an action] under this section[, including reasonable attorney's fees, shall be paid into the General Fund of the State.] SHALL BE USED BY THE COMMISSION TO FUND UNDERGROUND DAMAGE PREVENTION AWARENESS AND TRAINING.

§ 12-113. - ENFORCEMENT

THE COMMISSION SHALL ENFORCE THE PROVISIONS OF THIS SUBTITLE AND MAY PROMULGATE REGULATIONS NECESSARY TO IMPLEMENT ITS ENFORCEMENT.

§ 12-201. Scope of subtitle.

This subtitle applies only in Montgomery County.

§ 12-202. Requirements of public service companies - Requests for information.

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(a) *In general.*- On request from a person under subsection (b) of this section, a public service company shall provide to the person information under this subtitle that shows the location of the existing underground utility lines and structures of the public service company.

(b) *Persons entitled to request information.*- A person, including a public agency, is entitled to request information under this subtitle if the person intends to grade, strip, excavate, clear, transport, or fill land in the County or move earth in the County for the purpose of construction, development, or land clearing.

(c) *Time for making requests.*- A person requesting information under subsection (a) of this section shall make the request at least 7 days but not more than 30 days before the scheduled start of work.

(d) *Contents.*- If site drawings or plans are required by the County or a municipal corporation in which the work site is located, a request for information shall include two copies of a site drawing or plan that shows the location of the work site.

(e) *Certification.*- Promptly after receiving a request for information under subsection (a) of this section, a public service company shall certify to the person making the request:

(1) whether underground utility lines or structures of the public service company are located in the intended work area; and

(2) if underground utility lines or structures of the public service company are located in the area where the work is to be performed, that the location and size of the underground utility lines or structures have been marked on the ground or the date and time by which the marking will be performed.

(f) *Return of site drawing or plan.*- At the same time the public service company provides the certification under subsection (e) of this section, the public service company shall:

(1) return to the person making the request one copy of any site drawing or plan previously submitted; and

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(2) indicate on the site drawing or plan the horizontal location and size of its underground utility lines and structures.

§ 12-203. Same - Marking of underground utility lines and structures.

(a) *In general.*-

(1) [Excluding Saturdays, Sundays, and holidays, not more than 48 hours before the start of the work described in § 12-202 of this subtitle,] **IN ACCORDANCE WITH §12-109**, a public service company shall mark on the ground by staking, painting, or other suitable means the [horizontal] location **OF AN UNDERGROUND FACILITY** [and size of its underground lines and structures indicating the center of the line and its size or the sides of the structure].

(2) The public service company shall mark[, as appropriate,] **THE LOCATION OF AN UNDERGROUND FACILITY** within 3 feet [of the center of the underground utility line or the side of the underground utility structure] **ON A HORIZONTAL PLANE ON EITHER SIDE OF THE UNDERGROUND FACILITY.**

(3) IF EXCAVATION OR DEMOLITION IS REQUIRED WITHIN 3 FEET ON EITHER SIDE OF A FACILITY MARKING, IT SHALL BE PERFORMED BY HAND OR BY VACUUM EXCAVATION EQUIPMENT UNTIL THE MARKED FACILITIES ARE EXPOSED.

[3)] **(4)** If the underground structure is a cable or cables, the public service company shall include in the marking the number of cables.

(b) *Exception.*- If a public service company cannot mark the work site because of extraordinary circumstances within the time required under subsection (a) of this section, the public service company shall so notify the County and the person that made the request for information under § 12-202 of this subtitle of the date and time the work site will be marked.]

Minutes of the Meeting on 10/25/06 to Discuss Changes to the Maryland Damage Prevention Regulations

The first meeting to discuss changes to the Maryland damage prevention regulations was held on 10/25/06 starting at 9:30 AM in BGE's RBC – South building. Approximately 50 people were in attendance representing excavators, utility owners, locators, the one call center, and governmental agencies. Dick Schafer, who is the Md. PSC Chief Engineer, convened the meeting. Dick began the meeting with a discussion of "Why are we here?" (see Power Point presentation entitled Underground Facilities). Dick said that there are two bills (H. R. 5782 & H. R. 5678), which could be passed by the United States Congress in December, 2006, relating to damage prevention for energy products pipelines. Pipeline damage prevention is a major concern because when accidents associated with energy products pipelines are analyzed the number one cause of fatalities and serious injuries are third party damages. Under these bills the United States Secretary of Transportation would have enforcement authority for damages in States which do not have damage prevention regulations which conform to the following nine elements of an effective damage prevention program:

- Enhanced communication between operators and excavators
- Fostering support and partnership of all stakeholders in all phases of the program
- Operator's use of performance measures for persons performing locating of pipelines and pipeline construction
- Partnership in employee training
- Partnership in public education
- Enforcement agencies' role as partner and facilitator to help resolve issues
- Fair and consistent enforcement of the law
- Use of technology to improve all parts of the process
- Analysis of data to continually evaluate/improve program effectiveness

Also, States with effective damage prevention programs would be entitled to increased funding from the Federal government. Dick reviewed the nine elements as they pertain to Maryland. Dick felt that Maryland has done an excellent job in some of the areas especially employee training. However, he felt that Maryland fell short in the area of enforcement. Currently the PSC has no enforcement authority except for gas/LNG/hazardous liquid pipelines based upon the Federal Law 49CFR190. Enforcement authority for other utilities within Maryland lies with the Attorney General's office. Dick also said that Maryland has been ranked the third worst state in the Eastern Region for damage prevention. The main concern surrounding Maryland's damage prevention regulations is the lack of an effective enforcement program. Virginia is held up as having model damage prevention regulations. Dick feels that there are some elements of Virginia's regulations that are particularly good. However, Maryland needs

to adopt regulations which comply with the needs of all its stakeholders and are in conformance with the nine elements of an effective damage prevention program. Dick views enforcement as primarily an opportunity to learn and promote best practices. He views the PSC's role as that of an arbitrator.

After Dick's introduction, he said that Wayne Gilmer would be coordinating the damage prevention regulations change process. Wayne is the current Chairperson of the Miss Utility Damage Prevention Committee. Wayne works for UtiQuest and is responsible for damage investigations in their Beltsville office. Wayne started to review the proposed revisions to the Maryland Damage Prevention regulations. There was a lot of discussion concerning definitions. Wayne stopped his review at 12-104. There was concern voiced about the extent of enforcement especially relating to giving the PSC authority to promulgate regulations necessary to implement enforcement without Maryland legislature approval. There was also support voiced for having an authority to act as an arbitrator when there are disagreements between the excavator and owner over damage responsibility. There was also a suggestion made to create a separate section in the Maryland damage prevention regulations relating to energy products pipelines since the Federal regulations only pertain to these pipelines.

Wayne asked everyone at the meeting to review the proposed changes to the Maryland damages prevention regulations taking into consideration the two Federal bills. He asked everyone to submit comments to him before the next meeting. Wayne's email address is Walter.Gilmer@UtiQuest.com. The next Stakeholders meeting will be hosted by Verizon and is scheduled for November 29, 2006, 9:30 AM at 99 Shawan Road (3rd floor, conference rooms 1 and 2) in Hunt Valley, MD. A light breakfast and coffee will be provided beginning at 8:30 AM and lunch at 11:30 AM. The third meeting will probably not take place until January. Dick Schafer felt that the Maryland damage prevention regulations changes would probably not be ready to submit to the legislature until the 2008 session. The meeting adjourned at 1:30 PM.

Rewrite Title 12 MD'S Underground Facilities Damage Prevention Law October 25, 2006 Meeting

Name	Company Name	Telephone Number	E-mail address	Present
Pete Parr	BGE	410-291-3678	peter.n.parr@bge.com	
Wayne Gilmer	Utiliquest	301-674-2769	walter.gilmer@utiliquest.com	
Tom Baldwin	BGE	410-291-3121	t.c.baldwin@bge.com	
Vincent Healy	Verizon	301-790-7368	vincent.c.healy@verizon.com	
Matt Ruddo	Miss Utility Center	410-782-2025	matt@missutility.net	
Tom Hastings	OCC Locating Services	410-712-0202	thastings@occls.com	
Z. Sushko	MDPSC	410-767-8113	zsushko@psc.state.md.us	
Don Masters	Riggs Distler	410-997-0884	dmasters@riggsdistler.com	
Kevin Black	Washington Suburban Master Plumbers Association	301-776-7520	kevin.black@verizon.net	
Charles W.	Washington Suburban Master Plumbers Association	301-926-7464	ERW Homes, Inc.	
Jay Spence	Mirant	301-751-6269	james.spence@mirant.com	
Ken Farrell	PEPCO	301-548-4301	kffarrell@pepco.com	
Jim Crowley	Easton Utilities	410-763-9492	jcrowley@eucomail.com	
Charles Russell	Chesapeake Utilities	410-548-5515	crussell@chpk.com	
Jeff Brown	Choptank Electric	410-479-0420	jeffb@choptankelectric.coop	
Ralph Schieferstein	Chesapeake Utilities	302-734-9767 ext. 6734	rschieferstein@chpk.com	
Richard Cleveland	Chesapeake Utilities	302-736-7610	rcleveland@chpk.com	
Ric Chatham	Chesapeake Utilities	302-736-7610	rchatham@chpk.com	
Dave Barry	Peninsula Propane	410-749-4072	david.barry@penoil.com	

Name	Company Name	Telephone Number	E-mail address	Present
Ken Collision	C J Miller, LLC	410-239-8006	kcollision@cjmillerllc.com	
Shawn Sparks	Choptank Electric Cooperative	410-479-0420 ext. 3270	shawns@choptankelectric.coop	
Joe Wienecke	Petroleum Fuel & Terminal Co.	410-342-7800	jwienecke.pftblt@verizon.net	
Jack Wienhold	Petroleum Fuel & Terminal Co.	410-323-3808	jweinhold@cs.com	
Bob Beam	Petroleum Fuel & Terminal Co.	410-327-3808	bob.beam@verizon.net	
Chris Casnelli	Petroleum Fuel & Terminal Co.	757-545-4641	chriscasnelli@aol.com	
Walt Gainer	W.F. Wilson	443-755-8720		
Ed Lipinski	Lee Foundation	410-682-5335	eel3lipinski@comcast.net	
Brian Holmes	MD Highway Contractors Association	410-760-9505	brian@mdhighways.org	
Andre Robinson	Verizon	410-393-0580	andre.r.robinson@verizon.com	
Tom Kiefer	Baltimore County DPW	410-887-1893	tkiefer@co.ba.md.us	
Karen Watkins	SMECO	301-274-4350	karen.watkins@smeco.coop	
Scott Brown	Washington Gas	703-750-4388	ssbrown@washgas.com	
Clayton Munsey	Washington Gas	202-624-6050	jmunsey@washgas.com	
Mark Hamrick	Verizon	410-610-1371	mark.a.hamrick@verizon.com	
Jim Barron	Ronkin Construction	410-679-4750	jbarron@ronkinconstruction.com	
Polly Weber	AGL- Elkton Gas	410-920-8792	pweber@aglresources.com	
Tim Rich	Williams Gas Pipeline	410-465-7459 ext. 2222	tim.o.rich@williams.com	
Kevin Woolbright	WSSC	301-206-8216	kwoolbr@wsscwater.com	
Alex Baquie	A.A. County DPW	410-222-7340	pwboquill@aacounty.org	
Vernon L. Gauss Jr	Maryland Plumbing Heating Cooling Contractors	443-250-7876	tidybow12@comcast.net	

Name	Company Name	Telephone Number	E-mail address	Present
James C Berndt	Maryland Plumbing Heating Cooling Contractors	410-461-5977	jimtheplumber@comcast.net	
Tim Kempa	Comcast	410-371-3304	tim_kempa@cable.comcast.com	
Gary Nouse	Thompson Gas	301-432-6611 ext. 1230	gnouse@thompsongas.com	
Jeff Welty	Howard County DPW	410-313-4974	jwelty@co.ho.md.us	
Cal Brooks	Howard County DPW	410-313-4952	cbrooks@co.ho.md.us	
Derek Cloud	Comcast		derek_cloud@cable.comcast.com	
Bruce Bereano	AUC Lobbyist	410-267-0410	Fax-410-267-0177	