

Unauthorized Activities, Encroachment and Excavation – Management, Response and Correspondence

Purpose	The purpose of this document is to share learnings of how pipeline operators manage unauthorized activities, encroachment and excavation near hazardous liquid pipelines.
Reference	<ul style="list-style-type: none">• 49 CFR 195.442 – “Damage Prevention Program”• Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006• Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011• General Duty Clause of the Occupational Safety and Health Act of 1970• State laws and regulations
Appendices	<ul style="list-style-type: none">• Appendix A: Forms and Reports• Appendix B: Other Documents
Related Toolbox Topics	<ul style="list-style-type: none">• ROW Patrol and Response (Air/Ground)

Introduction:

To ensure protection to the general public, Company personnel, the environment and pipeline systems, pipeline operators establish procedures for responding to encroachments or activities upon Company Rights-of-Way (ROWs). A particular activity or encroachment may or may not be authorized and each requires specific handling.

Failure to comply with One-Call and pipeline operator requirements is just one example that may result in unauthorized excavation that endangers the public, workers, environment and pipeline safety. The appendices provide examples of correspondence operators have previously used in communicating with third parties or excavators.

CONSIDERATIONS: Procedures When Encroachment Is Encountered

- Approach anyone conducting unauthorized activity or encroachment with caution and be aware of the temperament of those performing unauthorized activity within the ROW. Appropriate Company personnel should determine whether law enforcement may be needed.
- Document the discovery of the encroachment and record the name, location, and contact information of involved Company personnel.
- Share information about the discovery of the activity or encroachment with personnel from field operations, ROW, integrity management, and other appropriate Company personnel.
- Decisions regarding the activity or encroachment should be documented and communicated to all appropriate personnel and involved parties.
- Appropriate Company personnel will investigate the activity or encroachment, as necessary, and coordinate with the landowner or encroaching party regarding the final disposition of the encroachment.

Records:

Pipeline operators may use a variety of methods to communicate. Operators may use verbal communication, email, a mailed letter, or other methods to convey to the party that they have engaged in unauthorized activity, encroachment, or excavation. Whichever method is chosen, it is critical to document what is sent to the party and maintain it in accordance with the Company's record retention policy. Certified mail may be used as a means of documenting that the correspondence was received.

The Company documentation retention policy should be followed so that the initial report, investigation reports and agreements or final resolution will be maintained in the Company records for the life of the pipeline. The Company may wish to file or record some documents with the appropriate state and/or local authorities.

CONSIDERATIONS: Documentation and Recordkeeping

- Unauthorized activities, encroachments, and excavations should be recorded on appropriate Company documentation.
- Foreign line crossings may be documented on a Foreign Pipeline/Cable crossing report or similar company document.
- Related paperwork, including the initial report, investigation reports, and final resolution will be archived and maintained for the life of the pipeline.

Responsibility:

The Company should identify appropriate personnel to implement procedures related to unauthorized activities, encroachments, and excavations. Personnel from field operations, ROW, public awareness, damage prevention, integrity management, and other departments may be involved.

The Company should also identify appropriate personnel who will be responsible for ensuring compliance and enforcement of unauthorized activity or encroachment guidelines. Identified personnel shall coordinate with field operations and ROW representatives on decisions to authorize activity or encroachments and resolve activity and encroachment issues. Other appropriate Company personnel may provide technical direction as required to achieve compliance with unauthorized activity or encroachment guidelines and procedures.

Unauthorized Activity or Excavation/Third Party Damage:

Third party damage occurs when a party other than a pipeline operator or a contractor acting on its behalf commits actions that result in damage to the operator's pipeline. Third party damage is a leading cause of serious pipeline incidents. Pipeline operators may establish standardized protocols for responding to unauthorized activity, excavation and/or third party damage affecting Company assets. Preventing excavating damage to pipelines by third parties is a top priority of both government regulators and the pipeline industry. An obvious way for pipeline operators to prevent excavation damage by third parties is to educate excavators about state One-Call Notification Systems and encourage their use.

A pipeline operator should take action whenever it becomes aware that an excavator - whether a homeowner, licensed contractor, or public employee - has commenced digging in the vicinity of a pipeline without first utilizing the One-Call Notification System, or has utilized the One-Call System but failed to report damaging the pipeline. Company response to such behavior should include promptly providing offending excavators with written notice of their failure to comply with state and/or federal law, and, where appropriate, provide offenders with a written demand for reimbursement for the cost of investigation, repair, and all damages. Through these responses, pipeline operators will be able to achieve the goal of deterring those who carelessly or intentionally bypass the One-Call System and/or conceal damage they cause.

Under some circumstance, pipeline operators may need to take more aggressive action. For example, when unauthorized third party excavation results in damage to a pipeline, the costs of which the excavator refuses to repay, or where an excavator repeatedly violates the one-call requirements, the operator could initiate civil litigation to recover damages or seek a court order barring the excavator from digging without first notifying the One-Call System. In addition, the operator may refer the offending party to appropriate enforcement authorities.

Discovery of Unauthorized Third Party Construction Activity:

In the course of everyday duties, pipeline operator personnel may encounter an excavator doing work on or near Company ROWs without the appropriate notifications having been given and authorization being granted.

CONSIDERATIONS: When Unauthorized Third Party Excavation Is Discovered

- Immediately investigate any construction activity near Company pipelines to see that proper procedures are, or were, followed and the pipeline maintains good integrity.
- When third party construction activity involving a Company pipeline or facility is discovered without prior approval or without a one-call notification, the locator should notify appropriate Company personnel immediately to determine and enforce Company rights. The ROW department and the appropriate supervisory personnel may be contacted.
- Inspect the premises immediately and take necessary steps to correct or prevent unsafe conditions, including shutting down the pipeline if needed.
- If a third party is seen within the ROW, or working over the Company pipeline, the excavation and construction activities should immediately be stopped until Company facilities have been located and investigated for possible damage.
- If excavation occurs within the Company's easement without authorization or an Encroachment Agreement, the excavation should be stopped until proper authorization is granted.
- The outside party should be advised that Company does not allow encroachments without prior agreement, and any such encroachment must be within requirements specified by Company.
- The outside party should be advised that if the excavation activities are determined to have caused damage, or may have an adverse effect on the future maintenance and operation of Company's facilities, they can be held responsible for current and future damages, and if the need arises, the repair, maintenance, and relocation of Company's facilities
- If a mutual agreement cannot be reached or excavation activities continue, the appropriate Company personnel and legal department may be advised. If necessary, local law enforcement authorities may be called for assistance.

General Procedure:

When unauthorized activity, encroachment or excavation is reported or encountered upon a Company ROW, contact should be made with the party to evaluate the unauthorized activity, encroachment or excavation. If pipeline integrity has been compromised, Company personnel should take immediate action, which may include initiating emergency procedures and the removal of the encroaching party by law enforcement officials. If the encroachment is unauthorized but it is determined that the Company can permit it to remain within the ROW, the appropriate Company personnel should commence documentation of the unauthorized activity, encroachment or excavation. Such documentation may include an Encroachment Agreement or other standardized document that will detail the pipeline operator's requirements to the party.

CONSIDERATIONS: Possible Mitigation Measures

- Request the activity cease until proper consent is given by the Company.
- Notify other appropriate Company personnel of the location, date, time, type of unauthorized activity, encroachment, or excavation, and the name and address of the party.
- Coordinate with appropriate Company personnel if an Encroachment Agreement or other standardized documentation will be developed.
- Appropriate Company personnel investigate the unauthorized activity, encroachment, or excavation, as necessary, and coordinate with the landowner or party regarding the final disposition.

NOTE: Some states may require mandatory reporting by pipeline operators of unauthorized activity, encroachment or excavation involving excavation on or near underground facilities without a proper one-call.

Investigation of Near Miss and Damage Incidents:

Mandatory reporting of third party damage may be required by state regulatory agencies. The pipeline operator should submit the information to the appropriate enforcement authorities within the required timeframe. Accordingly, immediately upon learning that a person or entity has engaged in excavation near the pipeline without first contacting the appropriate One-Call Center or that a pipeline has received damage from third party excavation, documentation of the incident should be commenced by the Company's damage prevention team leader for the area in which the incident has occurred or other appropriate personnel. Thorough, timely and accurate documentation of all relevant information involving unauthorized excavating activity and damage to the pipeline is critical to the successful implementation of a pipeline operator's damage prevention initiatives.

CONSIDERATIONS: For Investigations

- Record all relevant information regarding unauthorized excavation activity and unreported damage.
- Photograph the scene of the excavation as well as the damage to the pipeline.
- Documentation of the labor and material costs involved in investigating and repairing the line maintained.
- Inspection of the line necessary to verify that the line is not damaged.
- Photos of exposed line segments taken and maintained.
- Photos and other documentation of expenses incurred on repairs added to the investigation documentation.
- Where the name of the person or entity damaging the pipeline or that has engaged in unauthorized excavating activity is unknown, an investigation should be undertaken to determine, if possible, the identity of the offending party.
- Contact the appropriate One-Call center to obtain information regarding calls received by persons or entities intending to dig in the vicinity of the excavation site on or near the date that damage or excavating activity was discovered.
- If the One-Call Center has information that appears relevant to the incident under investigation, contact information for the person or entity that notified the One-Call Center should be obtained and appropriate Company personnel should attempt to contact the party and determine if they excavated near the pipeline or damaged the line.
- Contacts based upon follow-up with the One-Call Center should be documented.
- Assuming no useful leads are available from the One-Call center, further investigation at the site of the excavation/damage should be conducted in as timely a manner as possible.

- If work crews are in the vicinity, inquire whether they, or others they might have observed, were working at the site of the excavating activity.
- Inquire of adjacent landowners or occupants of neighboring commercial premises to determine if they observed any excavating activity in the area.
- If other utilities are located near the point of the excavating activity, contact the utility and determine whether workers were recently in the area performing maintenance work or if they can provide any helpful information.
- All steps undertaken as part of the investigation should be documented.
- In the event that information regarding the identity of the excavator cannot be obtained, all relevant information concerning the incident should be sent to Company's Damage Prevention coordinator or appropriate Company personnel, pending the discovery of additional investigative leads or other information.
- Development of a "Contractor Conflict Report Form" or equivalent to record incident information.
- The unauthorized activity recorded in a database or spreadsheet by appropriate Company personnel for tracking.

Tracking Excavation Incidents:

Tracking the disposition of third party excavating incidents is important:

1. To gauge the success of the Company's efforts in implementing a policy to deter unauthorized excavation in the vicinity of the pipeline.
2. Accurate documentation of case dispositions and the timely warning and referral letters that Company has sent to offending excavators will allow Company to demonstrate to regulators, the community, and other interested parties that Company is committed to a substantive course of action to prevent a leading cause of pipeline accidents.

Accordingly, appropriate pipeline operator personnel (i.e. Damage Prevention Coordinator or Team Leader) should prepare documentation that can be tracked using a spreadsheet or other method.

CONSIDERATIONS: Information That May Be Tracked

- The number of unauthorized third party excavating notifications received
- The number of reported excavating incidents involving damage to the pipeline
- The number of warning letters sent in response to notifications
- The number of demand letters seeking reimbursement for repair costs
- Total amount of repair reimbursement demanded
- Amount of repair reimbursement recovered
- The number of civil lawsuits commenced to recover repair costs
- The number of referrals to enforcements authorities
- The number of injunctive proceedings commenced
- The number of injunctive proceedings resulting in the issuance of an injunction

Zero-tolerance of unauthorized excavating activity and unreported damage to the pipeline requires that all incidents brought to Company's attention be considered potentially serious and be promptly and meaningfully addressed. Implementation of the forgoing practices, in addition to publicizing the initiation, settlement and/or other favorable disposition of legal proceedings commenced to deter third party damage and to recover repair costs may deter and ultimately prevent unauthorized excavating activity. Adherence to these practices and consistent enforcement will lead to positive relations in the communities where pipelines operate. Implementation of these practices is safe and prudent and consistent with the goal of operating pipelines in the safest and most environmentally responsible manner possible.

Warning and Reimbursement Letters:

Company considers prevention of third party damage to its pipeline a top priority. Consequently, Company should respond in writing any time it learns the identity of a person or entity that commences digging without first contacting the appropriate one-call notification authority or fails to report damaging the line or performs excavation in violation of Company policy.

CONSIDERATIONS: Warning Letters for Unauthorized Excavation

- Can be sent via Certified Mail with the return receipts added to the documentation, or by other methods so delivery can be verified.
- Appropriate Company personnel prepares the letter and sends copies to Company field operations supervisor and to the enforcing agency (i.e. One-Call Center, State Attorney General, public utility commission, etc.) for the jurisdiction where the incident of non-compliance occurred.
- Sent to the offending party as promptly as possible after the unauthorized excavation or failure to report damage.
- Sets forth the time, place and circumstances of the excavation in issue.
- Cites the pertinent federal or state statute or ordinance setting forth the requirement for notice to a one-call notification center.
- Provides appropriate one-call Center information.
- Notifies the offending party that Company expects to be reimbursed for the labor and material costs of all investigation and repairs to the pipeline and that Company will initiate civil proceedings to recoup such costs and expenses.
- Indicates that a copy of the letter will be sent to appropriate enforcement authorities and states that subsequent incidents involving the same party may result in the seeking of injunctive relief.
- Includes a copy of state One-Call Law in an effort to educate offenders to the requirements of the One-Call Law as well as consequences for failure to comply.

Demands for Damages and Initiation of Civil Proceedings:

Company may seek to recover reimbursement for all but the most insignificant third party damage to the pipeline.

CONSIDERATIONS: Seeking Reimbursement For Damages

- In a timely manner following completion of repairs, appropriate Company personnel will send a certified letter explaining the nature of the damage to the pipeline, the steps necessary to repair the line, and a formal request for reimbursement of the labor and material costs expended to investigate and make repairs.
- All related emails to the excavator and their responses should be kept in the incident file and phone calls should be logged and retained in the file.
- Photographs of damage to the pipeline and the repair process, as well as relevant documentation as to the costs of repair should be included with the demand letter.
- A model demand letter is included in the exhibits.
- In those instances where a party is unwilling to voluntarily reimburse Company for the damage that the party caused, Company may consider initiating civil proceedings to recover the costs of investigation and repair.
- The One-Call law in some states provides for both a civil penalty and for recovery of costs incurred in repairing and/or relocating the pipeline in the event the excavator fails to notify the One-Call center when excavating near known underground facilities (including pipelines) and subsequently damages such facilities.
- Working with the excavator for a mutually beneficial outcome is always the desired result, but when the excavator is not cooperative, the commencing of litigation may be required after consultation with appropriate Company personnel.
- Prior to recommending that civil litigation be commenced, at least one additional attempt to contact the excavator by telephone may be made and documented following receipt of proof that the initial letter was delivered.
- Absent a response, an additional certified letter should be sent repeating Company's demand for reimbursement and to give the excavator a final opportunity to agree to reimburse Company within a set period (i.e. ten (10) business days) or to explain why immediate reimbursement in full is not possible.

- If no satisfactory response is received, or if the excavator refuses to reimburse the costs of repair, prompt referral of the excavator to counsel for initiation of civil litigation may be undertaken.

Referral to Enforcement Authorities and Injunctive Proceedings:

Depending on the circumstances, formal referral of offending excavators to appropriate enforcement authorities should be considered; including local public safety authorities (local police, fire, building inspection/codes enforcement). Additional referrals about the incident may also be made to other authorities with enforcement powers, such as the state Attorney General, Public Utility Commission, or other state agencies tasked with enforcement of the One-Call and Health/Labor/Industry regulations.

CONSIDERATIONS: Referring To Authorities

- Mandatory reporting may be required by the law in the state where the incident occurred.
- Seriousness of threat or potential threat to lives and property in vicinity of excavation.
- Seriousness of damage or potential damage to the pipeline.
- Whether the excavator has previously engaged in high-risk excavating activity.
- Attitude of excavator in response to Company warning/demand letter.

NOTE: Appropriate Company personnel should approve the decision to refer the matter to counsel, at the discretion of management.

Referral of an excavator for criminal and/or civil prosecution or for imposition of administrative penalties may be appropriate. Enforcement authorities should be notified as soon as possible when they are to be involved.

CONSIDERATIONS: Process For Contacting Authorities

- Contact should initially be by telephone or email, informing the authorities that a formal referral is in process.
- This initial contact should be documented and maintained in the incident file.
- After telephonic or email notification of enforcement authorities, a referral letter may be faxed or emailed to the appropriate enforcement officials with a copy sent by certified mail.
- The substance of the letter will vary depending upon the circumstances of the incident.

Injunctive Proceedings:

An injunctive proceeding or court order may be sought requiring a person or entity to act, or to cease acting, in a certain manner. Where a party engages in excavation without proper notification to the One-Call system and causes, or nearly causes, damage to the pipeline and then, notwithstanding a warning letter and, possibly, a demand for reimbursement for repair costs, again engages in unauthorized excavating activity, Company should seriously consider seeking injunctive relief barring the excavator from engaging in similar activity. If Company is successful in obtaining injunctive relief and the excavator disregards the injunction, the excavator can be found in contempt of court and be subject to criminal prosecution. Appropriate Company personnel should be prepared to support and participate in such proceedings to the extent requested by counsel.

1 Appendix A: Forms and Reports

This appendix contains industry examples of forms and reports related to the topic.

1.1 Machinery Warning Stickers

These are examples of warning stickers that a pipeline operator can produce and have local field operations personnel carry in their vehicles while they perform ROW patrol and other activities. When excavation equipment is discovered near a pipeline without a one-call locate request having been made in the area and there are no one who can explain the presence of the equipment, a sticker may be left attached or near the equipment, along with pipeline awareness or other material. A picture of the sticker on the equipment may be taken and added to the documentation related to the activity at the location.

(Example 1)

WARNING!

DO NOT DIG OR EXCAVATE

Company has an underground high pressure petroleum pipeline in the area. In accordance with federal and state laws, you must contact Company and the local One-Call Center before digging or excavating.

Continued activity without authorization may lead to an emergency situation, including injury, death and severe environmental impact.


Date: _____ Time: _____

Contact Name: _____

Contact Number: _____

Mile Post: _____ Line Section: _____

(Example 2)

FRONT	BACK
PIPELINE COMPANY LOGO	PIPELINE COMPANY LOGO
<p>YOU ARE OPERATING IN CLOSE PROXIMITY TO AN UNDERGROUND PIPELINE.</p> <p>DO NOT ASSUME THE LOCATION OR THE DEPTH OF THE PIPELINE.</p> 	<p>WHAT TO DO IF A PIPELINE LEAK OCCURS:</p> <ul style="list-style-type: none"> • LEAVE THE AREA IMMEDIATELY. • AVOID ALL CONTACT WITH ESCAPING GASES OR LIQUIDS. • DO NOT OPERATE PIPELINE VALVES. • DO NOT DRIVE INTO THE AREA. • DO NOT USE A CELLULAR PHONE, LIGHT A MATCH, OR USE OTHER POTENTIAL IGNITION SOURCES. • FROM A SAFE DISTANCE, NOTIFY EMERGENCY AGENCIES.
<p>PIPELINE COMPANY INFORMATION / ASSISTANCE</p> <p>Please call (____)____-____ and ask for:</p> <p>_____</p>	<p>PIPELINE COMPANY NAME</p> <p>EMERGENCY PHONE NUMBER:</p> <p>1-8##-###-####</p>
<p>MESSAGE:</p> <p style="text-align: right;">#0001</p>	

2 Appendix B: Other Documents

This appendix contains industry example documents related to the topic.

2.1 Property Owner Letter

A pipeline operator may discover unauthorized excavation near their pipeline that they believe the property owner may have committed. The operator may want to send their excavation requirements to that property owner to prevent future occurrences.

(Example 1)

[Date]

[Name of Person or Entity]

[Address]

[City, State, Zip]

Dear XXXX:

Company is writing to inform you that we have identified activity on your property, located at [Address] and within the boundaries of the pipeline right-of-way (ROW), which we have not authorized. Under existing easements or other documents related to the pipeline at the property, the following activities may conflict with rights granted to operate the pipeline:

- Building a fence,
- Landscaping,
- Erecting a permanent structure,
- Or any other activity that may adversely affect the operation of the pipeline

STATE requires a notification be made to a state One-Call Center before you dig. This will allow time for underground utilities to be properly marked before any excavation is started. You are required to call **1-800-xxx-xxxx** to report your digging activity or simply dial 811 to make your notification. Most notifications to state One-Call Centers are free. Using the One-call promotes public awareness and is designed to eliminate potential hazards to excavators, the general public, underground facilities, and the environment where excavation is performed.

Evaluation

Company is evaluating the unauthorized activity that has taken place. If potential exists for the integrity of the pipeline to have been jeopardized in any way, then the pipeline will be exposed to inspect for

damage and perform maintenance. Company may seek to recover all costs associated with the inspection and repair of the pipeline directly from you.

We realize that this is your property and we want you to enjoy your land to its fullest. Company wants to continue to be a good neighbor, which is why we, as well as the pipeline industry and the **STATE**, have put requirements in place to protect you and those around you. By contacting us through the one-call system, we can locate and mark the pipelines and supervise the work to prevent any mishaps. This is done at no cost to you.

Your safety is the highest priority for us. Pipelines are the safest and most reliable way to transport the energy America needs to stay on the move. Without proper precautions, digging around a high pressure pipeline can be dangerous to the point of loss of life. The potential for an incident significantly increases if the One-Call System has not been utilized and a Company representative is not present to monitor the excavation. Please be safe and follow the proper requirements of the One-Call System for all projects involving excavation. Please contact me to clarify if you have any questions.

Sincerely,

NAME

TITLE

PHONE/EMAIL

2.2 First Occurrence Letter – No Damage

When an operator discovers unauthorized excavation near a pipeline that appears to not have resulted in damage, the operator may want to notify the offending party that while this occurrence of excavation is not believed to have caused damage, the operator is concerned about the activity and that all future excavation must be performed in accordance with their policies and procedures.

(Example 1)

[Date]

[Name of Person or Entity]

[Address]

[City, State, Zip]

Re: Unauthorized Encroachment into Pipeline Right-of-Way (ROW)/Failure to Make a One-Call Prior to Installation of Underground Facility

Company operates a high pressure petroleum pipeline at [Location of encroachment / unauthorized excavation]. Encroachment /unauthorized excavation was recently discovered at this location. Immediate contact is required to ensure that public, worker, and pipeline safety is not further endangered.

Company is evaluating the unauthorized activity that has taken place within our ROW and/or over our pipeline. If the potential exists for the integrity of the pipeline to have been jeopardized in any way, the pipeline will be exposed to inspect for damage. Investigation and repair costs will be paid by the party responsible for the damage. The pipeline industry, including Company, has put precautionary steps in place to protect you, your employees and the general public. By contacting us before you dig, as required by law, we will coordinate having a Company representative on-site to authorize excavation work being done near the pipeline(s) we operate - which is done at no cost to you.

Pipelines are the safest and most reliable method of transporting the fuel America needs to stay on the move. However, digging near a pipeline without a representative from the operator present significantly increases the likelihood of an incident. A representative from our Company must be on-site to monitor all excavation near our pipelines. Should additional unauthorized excavation occur over/near our pipeline we will be required to report this activity to the **STATE** and/or other enforcement authorities for non-compliance with pipeline safety requirements.

Incident Information

An inspection of Company's Right-of-Way on (DATE), revealed (description of non-compliant activities) at (GPS coordinates Lat. ____, Long. ____), at (address location). Company has discovered that you have been involved in excavation activities near underground pipeline facilities owned or operated by Company without prior notification to the State One-Call Center and without a valid **[Encroachment**

Agreement/Authorization Required] , which is a violation of **Company** procedure and may violate state and federal laws. The unsafe excavation was within the pipeline ROW of Company's high pressure petroleum pipeline.

- This recorded Near Miss will be used in the future to demonstrate any unsafe patterns of excavation practices unacceptable by Company and which pose a significant threat to public safety. Activity within our pipeline ROW must be authorized to ensure it does not pose any threat to public, worker and pipeline safety. You will be contacted to arrange a meeting to discuss the above incident and determine how we can meet our joint commitment to safety and comply with federal and state law.

Company Policies

- Company works diligently to maintain a safe environment by establishing and enforcing a protection zone around each of Company's subsurface utilities. "No excavation within the protection zone is permitted without a Company representative present."
- Any and all Third Party work within Company protection zone will be communicated to Company via an agreement documenting:
 - Scope of work,
 - Schedule of work,
 - Procedures to execute work in a safe manner,
 - Responsible parties involved, and
 - Procedures to communicate any change to the agreement
- If the potential exists where the integrity of the pipeline has been jeopardized in any way, the pipeline will be exposed to inspect and repair any damage that occurred.
- Company has the right to recover any costs associated with the inspection and repair of the pipeline.

For further information regarding damage prevention of underground facilities:

- Please visit the One-Call website **[state web address]** or call the One-Call toll free by dialing 811.
- Review the enclosed pipeline awareness brochure - TITLE of Company's pipeline awareness brochure.
- Refer to the Excavator Manual that is published by the local One-Call system.

Please contact me to discuss.

Sincerely,

NAME

TITLE

PHONE/EMAIL

(Example 2)

[Date]

[Name of Person or Entity]

[Address]

[City, State, Zip]

Re: Failure to Use State One-Call Notification Center Prior to Excavation

This letter is to inform you that we have learned that your company is believed to have engaged in excavating activity in the vicinity of a pipeline owned and/or operated by Company. It is believed that this activity was in violation of the [insert applicable state] law regarding underground utilities. [Insert reference to state one-call law]. At this time, we are uncertain as to whether your activity caused damage to the pipeline, but are investigating and will notify you subsequently to inform you of any such damage.

As set forth in Section [insert section of state one-call law], prior to any excavation, an excavator is required to contact [insert applicable state] State's One-Call Notification Center and provide notice of the planned excavation. For your convenience and future reference, I have enclosed information about the State's One-Call Law. Additional information is available on the State One-Call Web site: www.xxxxxx.org/com. The One-Call Notification Center can be reached by dialing 811.

Third party excavating activity is a leading cause of damage to natural gas and hazardous liquid pipelines. Often, such damage results from excavation projects related to construction or repair of underground facilities. Failure to utilize the one-call service can be quite costly in terms of unnecessary risk for the excavator, their employees, the public, personal property of others, and the environment.

Violations of the State's one-call statute may be similarly costly. Offenders who fail to call the One-Call Center and subsequently cause damage to a hazardous liquid or gas pipeline may be subject to civil and criminal penalties and will be liable for damage to the pipeline that results from violations.

As far as we are aware, this is the first instance in which your company has excavated in close proximity to Company's pipeline facilities without utilizing the one-call notification process. We want to ensure that you are aware of the one-call notification requirements and the consequences of failing to abide by those provisions. In the future, we expect full compliance and that you will utilize the service prior to each and every excavation project.

The use of One-Call System has drastically reduced excavation-related damage to pipelines. This system was created to promote public safety, avoid costly damage to underground facilities, and reduce the cost and time of notifications. Please utilize the One-Call System for every excavation-related project.

Going forward, subsequent instances of non-compliance with one-call notification and Company excavation requirements will be considered as willful disregard of the law and the safety and well being

of others. Formal referral to appropriate enforcement authorities may be undertaken, along with requests for the imposition of fines and penalties. We will seek reimbursement for all costs incurred inspecting and/or repairing damage caused by unauthorized excavating activity near Company's underground facilities. Repeated failures to notify the One-Call Center will result in Company seeking injunctive relief barring your company from future unauthorized excavating activity.

If you have any questions about any aspect of this letter, please contact **[NAME]** at **[NUMBER]**.

Sincerely,

NAME

TITLE

EMAIL

(Example 3)

[Date]

[Name of Person or Entity]

[Address]

[City, State, Zip]

Re: Location/Encroachment Name

Incident Information

- On **(DATE)**
- A Company employee visited a section of pipeline right-of-way (ROW) at **(LOCATION)**
- That was noted on aerial report for having disturbed soil.
- Upon arrival at the site, unauthorized activity was reported. **(DESCRIPTION OF UNAUTHORIZED ACTIVITY)**
- Proper notification to the One-Call Center being made by your company has not been documented to have occurred.
- Such excavation activity is in violation of Company's easement and the **(STATE LAW)**.

General Information

- Violations of the One-Call Law create a considerable safety risk to workers, the public and the environment.
- The pipeline transports liquids under high pressures. Rupture of pipelines can cause injury and extensive property damage. Considering the risks, the safety laws requiring notice must always be followed.
- Financial claims in the event of such an incident can be so enormous as to have a devastating effect to the responsible party.
- **State** One-Call Law, **(STATE LAW)**, provides for civil penalties for violations to the One-Call Law.
- Provisions of the **(State)** code may also allow a professional licensing board to suspend or revoke a professional or occupational license, certificate, or registration issued to a person who violates the One-Call Law.
- Company requires all excavations near our pipelines comply with the regulations and statutes providing prior notification before excavation.
- Additional information regarding the state one-call regulations can be found at **(WEB ADDRESS)**.

- Prior to any further excavation on your property you should contact the One-Call Center by dialing 811.

Sincerely,

NAME

TITLE

PHONE/EMAIL

(Example 4)

[Date]

[Name of Person or Entity]

[Address]

[City, State, Zip]

COMPANY, together with those affiliated pipeline companies for which it acts as an operator (collectively Company), aggressively and diligently protects its ROWs from encroachment. The safety of the public and the environment is our greatest concern. Company regularly conducts patrols to prevent improper activities from occurring on the ROW. The success of our pipeline safety efforts is dependent upon compliance with one-call notification procedures by excavators such as you. **Excavation without one-call notification puts the public, you and your employees at significant risk and violates the Law.**

Excavators must contact a One-Call Center before starting any excavation using mechanical tools. An operator of affected facilities must visibly mark those facilities after receiving notice of intent to dig near those facilities. Civil penalties may be imposed if an excavator fails to provide notification before digging or fails to wait the legally stipulated time after calling to commence the planned work (except in an emergency). An excavator is responsible for immediately notifying the underground facility operator if they come into contact with the facility or cause damage.

The cost to repair a damaged pipeline and replace its lost contents may prove to be very substantial. Additionally, you run the risk of being subject to civil and/or criminal legal actions should your excavating activities result in injury or death to others, or damage to property and the environment.

THE ABOVE SHOULD NOT BE REGARDED AS THE RENDERING OF ANY FORM OF LEGAL OPINION TO YOU BY **COMPANY**. **COMPANY** URGES YOU TO CONSULT WITH YOUR OWN LEGAL COUNSEL OR OTHER QUALIFIED PARTIES IN REGARD TO THE IMPACT UPON YOU WITH RESPECT TO THE STATE LAW GOVERNING EXCAVATION ACTIVITIES.

Please be assured that COMPANY will work with you in a cooperative manner to facilitate the orderly carrying out of your activities. COMPANY may be required to report to the proper enforcement authorities any and all violations of the referenced statute that affect, or could affect its pipelines.

“Call Before You Dig”. To contact the State One-Call Center, dial: 811

Sincerely,

NAME

TITLE

PHONE/EMAIL

2.3 Public Entity Warning Letter

When an operator discovers that unauthorized excavation near a pipeline has occurred and believes the action was undertaken by or on behalf of a public entity, such as a department of public works or road crew, the operator may want to express concern about the activity to the appropriate officials, as well as convey the requirement that all future excavation must be performed in accordance with their policies and procedures. While some exemptions exist in state one-call laws for certain activities performed by public entities, public and worker safety requires that coordination should always occur for activities near pipelines. Sending copies of the correspondence to the local elected officials may help in ensuring safe practices are followed in the future.

(Example 1)

[Date]

[Name of City/Town/County/State Public Entity]

[Address]

[City, State, Zip]

Re: Notification of Unsafe Excavation Practices Occurring Near Company Pipeline

Company operates a high pressure petroleum pipeline in your community. Unsafe excavation practices demonstrated by the Public Entity were found to have occurred on **(date)**, when Company discovered **(describe incident)** at **(insert location)**. This action posed a very serious risk to the health of the excavator, the community and the integrity of the underground pipeline and did not comply with state and federal excavation laws and requirements.

(State One-Call Law) ensures public safety, utility integrity, and defines specific actions to be taken by each responsible party before excavation can occur. As an underground facility owner, Company is mandated to comply with all state and federal regulations and will not waiver in the execution thereof. Any and all excavation work within the Company protection zone must be communicated to Company via an agreement documenting scope of work, schedule of work, procedures to execute in a safe manner, responsible parties involved and procedures to communicate and change to the agreement. Company would like to offer a short presentation which explains safe work practices around underground facilities, applicable requirements, the Company's pipelines in the [Name of City/Town/County/State] area and other information regarding safe excavation practices.

If you have any questions or would like schedule a presentation, **[Company Contact]** can be reached at **(xxx) xxx-xxxx**.

Sincerely,

NAME

TITLE

PHONE/EMAIL

CC: City/Town/County/State Elected Officials

2.4 Second Unauthorized Excavation Occurrence Letters – No Damage

Repeated unauthorized excavation near a pipeline is a very serious offense. If the pipeline operator had previously communicated their requirements to an excavator and then the excavator engages in another unauthorized excavation, the operator may step up their response to the excavator and request enforcement action be taken by appropriate authorities, even if there is no damage to the pipeline.

(Example 1)

[Date]

[Name of Person or Entity]

[Address]

[City, State, Zip]

Re: Failure to Use State One-Call Center Notification Center Prior to Excavation

This letter is to inform you that we believe your company engaged in excavation activities in the vicinity of a pipeline owned and/or operated by Company, at **[address]** in violation of the **[state]** law regarding underground utilities. Industry and government regulators at both the state and federal level have recognized that third party excavating activity is a leading cause of damage to natural gas and hazardous liquid pipelines. The use of One-Call Centers has drastically improved worker and public safety and reduced excavation-related damage to underground facilities.

As set forth in **[State]** act, notice of excavation must be given at least [XX] hours prior to the commencement of the excavation, <excluding Saturdays, Sundays, and legal holidays>. The location and marking of the site shall be completed at no cost to the excavator. Failure to utilize the one-call service can be quite costly in terms of unnecessary risk for the excavator, their employees, innocent bystanders, personal property of others, and the environment. Offenders who fail to contact the One-Call Center and subsequently causes damage to natural gas and hazardous liquid pipelines may also be subject to a civil penalty of up to **\$\$\$\$** per violation and are liable for damage to the pipeline that results from a violation. For your convenience and for future reference, I have enclosed a copy of the State One-Call Law. Additional information is available from the one-call website at **[One-Call Center web address]**.

According to our records, this incident is the second occurrence of non-compliance by your company with the **[State]** One-Call Law involving our facilities. We have taken steps to notify the **[State]** One-Call Center and appropriate enforcement authorities of your actions. We are requesting that those authorities impose fines and/or penalties consistent with the **[State]** One-Call Law. Regardless of the enforcement action that may be taken, we will seek reimbursement for all costs incurred by Company for:

- Damage
- Inspection

- Loss of service
- And/or any subsequent costs caused by unauthorized excavating activity near our underground facilities

Repeated failures to notify the One-Call Center may also result in Company seeking an injunction barring you from future unauthorized excavating activity around our facilities.

If you have any questions about any aspect of this letter, please contact **[Appropriate Company Personnel]** at **(xxx) xxx-xxxx**. To contact the local One-Call System, simply dial 811.

Sincerely,

NAME

TITLE

PHONE/EMAIL

Cc: **[state]** One-Call Center

Enclosure

2.5 Failure to Abide with Right-of-Way (ROW) Stipulations and Requirements

Many pipeline operators have established stipulations and requirements for work and activity in their pipeline ROWs. These have been designed to prevent damage from occurring to the pipeline and to ensure the safety of the public, workers and the pipeline. Those planning work are provided with the pipeline operator's requirements when the operator is made aware of the planned work. Failure to comply with the requirements is a very serious offense that jeopardizes safety.

(Example 1)

[Date]

[Name of Person or Entity]

[Address]

[City, State, Zip]

Re: Failure to Abide by Company General Right-of-Way (ROW) Stipulations and Requirements

This letter is to inform you that Company has learned that we believe you have failed to abide by Company General ROW Stipulations and Requirements. Your company **[Name Contractor]** previously agreed to follow an excavation agreement/Excavation Safety Checklist on **[Date]**. A representative of your company, [Name of employee who signed], agreed to comply with specific stipulations and requirements set forth by Company.

Our investigation determined that on **[Date]** **[Name of Contractor]** was engaged in excavation activity near Company's pipeline(s). Representatives of your company failed to **[describe failure to comply with Stipulations and Requirements provision]**. This failure to abide by the provisions is not only a violation of your prior agreement with Company, but also presented a risk to public and worker safety. In the future, non-compliance with the terms of Company ROW Stipulations and Requirements will result in Company notifying appropriate state or federal authorities of [Name of Contractor] conduct and/or commencing legal proceedings to compel [Name of Contractor] to abide by Company's ROW Stipulations and Requirements.

If you have any questions about any aspect of this letter or should you wish to clarify any of the stipulations and requirements, please contact **Company Contact** at **xxx-xxx-xxxx**.

Sincerely,

NAME

TITLE

PHONE/EMAIL

2.6 Damage to a Properly Marked Pipeline – Reimbursement Request

Damage to a pipeline requires a swift response by the operator and the responsible party must be notified of the damage they caused. Pipeline operators should consider requesting reimbursement from excavators who cause damage.

(Example 1)

[Date]

[Name of Person or Entity]

[Address]

[City, State, Zip]

On **(Date of Incident)** Company's [type of pipeline] was struck by **(equipment)** being operated by **(name of equipment operator)**, an employee of **(Contractor)**, causing damage and resulting in the shutdown of the pipeline between **(up-stream location)** and **(downstream location)** for approximately ___ hours. The line hit by **(equipment operator)** had been properly marked as required by all required regulations.

Prior to being damaged, the pipeline was properly marked with both permanent markers and temporary flags. The appropriate field/ROW representative from Company met with representatives **(Equipment Operator)** of your company on **(Dates)** and explained both Company damage prevention procedures and the necessity for **(Company Representative)** to be notified and onsite any time project work was within XX feet of our pipelines.

Our pipeline was damaged because Company field operations personnel were not notified of the work being performed within XX feet of the line and therefore were not onsite.

The damages caused by this incident cost Company:

- \$XX,XXX to investigate and repair.
- \$XX,XXX in lost transportation opportunity

Response to this incident required a great deal of time and effort on the part of many employees whose normal duties that had to be put off until the situation could be stabilized. The response required notifications and reports to the United States Department of Transportation, **(State Agency)**, **(County Agency)**, and numerous other officials. Company respectfully requests reimbursement for the above costs. Future excavations must be performed in accordance with existing laws and procedures. Company would be happy to assist with training your personnel regarding excavating near pipelines and can provide pipeline awareness materials.

Please see the attached invoice and submit payment in the amount of \$_____, to: **Company Address**

Sincerely,

NAME

TITLE

PHONE/EMAIL

(Example 2)

[Date]

[Name of Person or Entity]

[Address]

[City, State, Zip]

On **(Date)**, your company endangered your workers, the community and the environment by engaging in **(Description of equipment/event)** that caused damage to a pipeline operated by COMPANY which resulted in a release of **[product type]** at **LOCATION** in **CITY/TOWN,COUNTY, STATE**.

Company regards this activity to be extremely dangerous to you as well as to the public and to our pipeline. Your excavation in the area of our pipeline easement without providing prior notification to the One-Call System created an unnecessary hazard. This hazard could have been eliminated if you had provided the required notification to the **STATE** One-Call Center informing them of your planned excavations.

Company strives to be a good neighbor when dealing with landowners, tenants, contractors, utilities, and agencies. We make every reasonable effort to provide assistance whenever requested. We remind you of our presence and encourage you to communicate with us. However, we cannot allow unsupervised excavation anywhere near our pipeline. We must take all necessary steps to protect the safety of those living along our pipeline route and to insure the integrity of our pipeline system, up to and including having the proper enforcement authorities become involved to protect the public, the environment and our pipeline.

Please be advised that we will be seeking compensation from your company for the investigation, repair and clean-up costs associated with this incident.

To discuss this incident, please contact me.

Sincerely,

NAME

TITLE

PHONE/EMAIL

2.7 Additional Reimbursement Requests

If an excavator does not respond to the first request from a pipeline operator for reimbursement for damage they caused, the operator may send a second request.

(Example 1)

[Date]

[Name of Person or Entity]

[Address]

[City, State, Zip]

Re: Request for Reimbursement for Damage to Company's Pipeline

We are writing as a follow-up to our letter dated [Date]. In that letter, we stated Company had become aware that you had engaged in excavating activity in the vicinity of Company's pipeline without first providing the proper notification to the One-Call Notification Center, a violation of state law. We also stated that we had not yet determined if your excavation activity had caused damage to the pipeline and we would request reimbursement from you Company for the costs associated with investigating and repairing the damage.

Your excavation activity did cause [describe damage]. Repair of this damage required [explain nature and duration of repair process, including number of persons necessary to effectuate repair]. Enclosed are photographs of the damage to the pipeline and of the repair process. Also enclosed is an itemized bill of the costs of repairing the damage. The total cost of repairing the damage your excavation activity is [\$XXX].

We must hear that you intend to reimburse Company the total amount within ten (10) business days. If you are financially unable to remit immediate reimbursement in full or if you believe there are mitigating circumstances that make this request for full reimbursement inappropriate, please contact the undersigned at your earliest opportunity. Failure to respond to this letter will leave Company with no alternative but to refer this matter to counsel for further consideration. Company will pursue all options to recover all costs associated with this avoidable incident.

Thank you for your attention in this matter.

Sincerely,

NAME

TITLE

PHONE/EMAIL

(Example 2)

[Date]

[Name of Person or Entity]

[Address]

[City, State, Zip]

Re: Refusal to Reimburse Repair Costs for Pipeline Damage

By letter dated [date], we requested that you reimburse Company for the costs of repairing damage to Company’s pipeline that was caused by your excavation activity without first contacting the appropriate One-Call Notification center, a violation of state law. You [contacted/wrote] us on [date] and informed us that you would not reimburse Company for the cost of repairs.

This letter constitutes notices that unless you alter your position and notify us in writing within ten (10) business days of your intention to reimburse Company for the full cost of repairs, or satisfactorily explain why full reimbursement is either not possible or is inappropriate under the circumstances, we will instruct our attorneys to initiate collection procedures to recover our costs.

Thank you for your immediate attention to this matter.

Sincerely,

NAME

TITLE

PHONE/EMAIL

(Example 3)

[Date]

[Name of Person or Entity]

[Address]

[City, State, Zip]

Re: Second Request for Reimbursement for Damage to Company's Pipeline

This letter constitutes Company's second and final request for reimbursement for the costs of repairs to Company's pipeline. As we previously informed you by letter dated **[date]**, the repairs in question were necessitated because of damage caused by excavating activity you commenced without first contacting the appropriate One-Call Notification center, a violation of state law. We have again enclosed an itemized bill for the costs incurred by Company in repairing the damage to the pipeline.

Our previous letter informed you that Company would refer this matter to counsel for the initiation of collection procedures if we received no response to our initial request for full reimbursement of our repair costs. After having received no response, we attempted to contact you by telephone on **[date]**, but were unsuccessful. This letter constitutes our final attempt to contact you regarding this matter. If you do not agree to reimburse Company for full cost of repairing the pipeline within ten (10) business days or contact us to advise us of any circumstances that you believe make our request for full reimbursement inappropriate, we will initiate collection procedures without further delay.

Thank you for your immediate attention to this matter.

Sincerely,

NAME

TITLE

PHONE/EMAIL

2.8 Enforcement Actions for Near Miss and Damage Incidents

Unauthorized Excavations without Damage/Near Miss First Offense

- Field Operations personnel discuss local one-call and Company excavation requirements with excavator or landowner/resident at incident site and provides public education material.
- Appropriate Company personnel send a follow-up letter to both the excavator or landowner/resident reinforcing the need for placing a one-call and the dangers associated with digging without one and of failing to abide by Company policies. The State One-Call Center or enforcement authority is sent a copy of the letter.
- The Company Public Awareness Program administrator or appropriate personnel verifies resident address is in the Affected Public database and excavator address is in the Excavator database and they were included in the most recent Public Awareness Program mailing in that area.

Unauthorized Excavation Without Damage/Near Miss Second Offense

- Field Operations personnel discuss local one-call and Company excavation requirements and need to follow those requirements with excavator or landowner/resident at incident site and provides public education material.
- Field Operations personnel meet face-to-face with the excavator or landowner/resident and explains that this is the second offense and we may seek reimbursement for any investigative digs that may be required to verify the integrity of the pipeline.
- Appropriate Company personnel sends a follow-up letter to both the excavator or landowner/resident reinforcing the need for placing a one-call and dangers associated with digging without one and of failing to abide by Company policies. They are also notified that costs incurred by the Company to inspect for damage will result in an invoice to the excavator seeking compensation. The State One-Call Center or enforcement authority is sent a copy of the letter.

Unauthorized Excavation Without Damage/Near Miss Third Offense

- Field Operations personnel discuss local one-call and Company excavation requirements with excavator or landowner/resident at incident site and provides public education material.
- Field Operations personnel meets face-to-face with the excavator or landowner/resident and explains that Company will be seeking reimbursement for investigative digs and contacting the appropriate enforcement agency for additional enforcement.
- The appropriate Company personnel seek damages for any investigation digs required and sends a copy of all 3 follow up letters to State Attorney General, State One-Call Center and other enforcement authorities.

Unauthorized Excavation with Damage to the Pipeline

- Field Operations personnel discuss local one-call and Company excavation requirements with excavator or landowner/resident at incident site and provides public education material.
- Field Operations personnel meet face-to-face with the excavator or landowner/resident (if applicable) warning that Company will be seeking reimbursement for damages. If this is the second offense, Company explains they will also be contacting PHMSA, and other authorities for additional enforcement.
- The Company Public Awareness Program administrator or appropriate personnel verifies resident address is in the Affected Public database and contractor address is in the Excavator database for the most recent Public Awareness Program mailing.

If the offending party for any of the above is a utility or other pipeline company, appropriate Company personnel may contact the One-Call Center to determine if they are a member. The pipeline operator may share information about the incident with the One-Call Center or local Damage Prevention Council.

If the offending party for any of the above is a municipality, township, county or other government unit, the appropriate Company personnel may verify the entity is in the database for the most recent Public Awareness Program mailing. Determination should be made if the entity is exempt or believes it is exempt from one-call requirements. For a second offense, appropriate Company personnel should meet face-to-face with the Municipal/Township/County group to discuss the safety concerns of their workers, the public, and the environment. Seeking a meeting with local elected officials to discuss the importance of one-call and Company excavation requirements may also be pursued.