

NUCA Assists in Implementation of New Pipeline Law



By Eben Wyman

In the final hours of the 109th Congress, lawmakers passed the Pipeline Inspection, Protection, Enforcement, and Safety (PIPES) Act, providing NUCA with the biggest legislative victory of 2006. The law, among other things, authorized substantial funding for the Common Ground Alliance (CGA), authorized grant money for projects to enhance locating technologies and directly addressed the issue of state damage prevention laws and enforcement practices.

The act also prescribed nine elements of an effective damage prevention law, authorized federal money for states to improve their damage prevention laws and allowed for a potential federal role in enforcing those laws in cases where states were not doing enough to enforce them. The enforcement provisions are being evaluated by key stakeholder groups working collectively to assist the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the implementation of those provisions. NUCA is front and center in the effort.

Nine Elements

The PIPES Act provides nine elements of an effective law — elements that were agreed to by virtually all stakeholders during the legislative process. The elements are as follows:

- (1) Participation by operators, excavators, and other stakeholders in the development and implementation of methods for establishing and maintaining effective communications between stakeholders from receipt of an excavation notification until successful completion of the excavation, as appropriate.
- (2) A process for fostering and ensuring the support and partnership of stakeholders, including excavators, operators, locators, designers, and local government in all phases of the program.
- (3) A process for reviewing the adequacy of a pipeline operator's internal performance measures regarding persons performing locating services and quality assurance programs.
- (4) Participation by operators, excavators, and other stakeholders in the development and implementation of effective employee training programs to ensure that operators, the one-call center, the enforcing agency, and the excavators have partnered to design and implement training for the employees of operators, excavators and locators.
- (5) A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities.
- (6) A process for resolving disputes that defines the State authority's role as a partner and facilitator to resolve issues.
- (7) Enforcement of State damage prevention laws and regulations for all aspects of the damage prevention process, including public education, and the use of civil penalties for violations assessable by the appropriate State authority.
- (8) A process for fostering and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications, underground pipeline locating capability, and gathering and analyzing information about the accuracy and effectiveness of locating programs.
- (9) A process for review and analysis of the effectiveness of each program element, including a means for implementing improvements identified by such program reviews.

While lobbying the PIPES Act, NUCA made it clear that while we strongly support the nine elements, any approach to implementing or enforcing them must be balanced to ensure that all stakeholders — facility owners and excavators alike — meet their responsibilities. NUCA succeeded in securing that promise of balanced implementation and enforcement in the final bill, and now continues its efforts to level the playing field as the elements are implemented at the state level.

Excavation Damage Prevention Initiative

On May 1, following the national kickoff event of the "811" three-digit dialing initiative, NUCA and several

CGA organizations met to discuss next steps in the PIPES Act enforcement provisions. Soon after that meeting, NUCA joined with the American Gas Association (AGA), the Association of Oil Pipe Lines (AOPL), the Interstate Natural Gas Association of America (INGAA), and the Associated General Contractors (AGC) as founding members of the Excavation Damage Prevention Initiative (EDPI).

The goal of EDPI is to reach consensus among excavators, underground facility owners, operators, safety advocates, state regulators and the public on implementation of the nine elements in state laws. The EDPI “founders” listed above reflect the industry stakeholders that will be directly affected by the PIPES Act. Although states that adjust their laws and/or damage prevention enforcement practices will almost certainly adjust them to include all underground facilities, the PIPES Act itself only addresses natural gas and hazardous liquid pipeline operators and excavators. Therefore, while the idea is to reach consensus among all stakeholder groups, the EDPI effort began with those directly impacted by the new law at the table. EDPI material will be shared with all stakeholder groups for review and comment as the process moves forward. The EDPI effort is tasked with meeting five goals, including:

- Developing a white paper or “guidelines” endorsed by stakeholders that clearly define the nine elements
- Developing stakeholder endorsed modules that can be incorporated into state one-call legislation and/or regulations that address the nine elements;
- Developing an advocacy strategy to help state stakeholders implement the appropriate modules so that a state will have a program that is consistent with the nine elements
- Providing an information-sharing mechanism that gives state stakeholders needed information in order collectively work to change and/or enact state regulations or other actions needed to incorporate the nine elements
- Determining national stakeholder-endorsed criteria for state eligibility to receive excavation damage prevention grants and performance metrics for measuring progress in the nine-point program

Both PHMSA and the CGA are working with EDPI to assist with this collective approach to implementing the nine elements. NUCA staff is communicating regularly with members of the association’s Damage Prevention Committee to ensure that the excavation community’s voice is heard as these goals are met and as state damage prevention programs and enforcement practices are evaluated.

As the PIPES Act made its way through the House and Senate, NUCA actively lobbied to prevent the establishment of a federal role in enforcing state one-call and damage prevention laws (unless a state was doing nothing or next to nothing in terms of enforcement) — and to ensure that a federal role would end as soon as a state reformed its damage prevention oversight practices. That said, NUCA believes that enforcement is often unbalanced in terms of ensuring that all stakeholders meet their responsibilities. Implementation of the nine elements can help excavators in many states, and NUCA encourages its chapters and members to take a good look at these elements — and all information coming from the EDPI — and use it in efforts to improve state damage prevention laws. Together, we can create a more level playing field and increase damage prevention efforts in general.

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