



SAFETY IS IN YOUR HANDS.  
EVERY DIG. EVERY TIME.



# Utilizing Effective Enforcement for Damage Prevention



U.S. Department of Transportation

Pipeline and Hazardous Materials Safety Administration

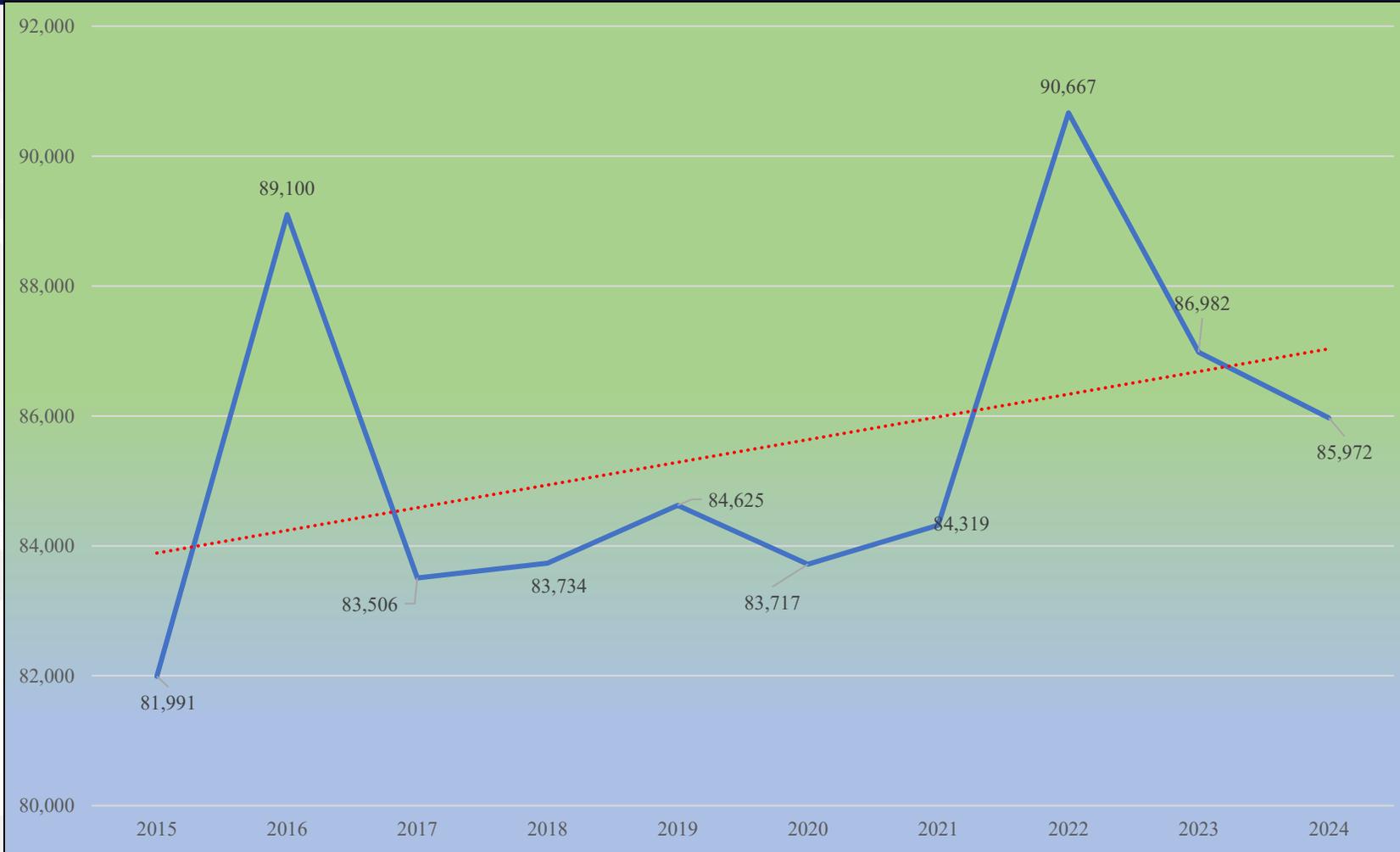
David Appelbaum – [David.Appelbaum@dot.gov](mailto:David.Appelbaum@dot.gov)

# The Damage Data

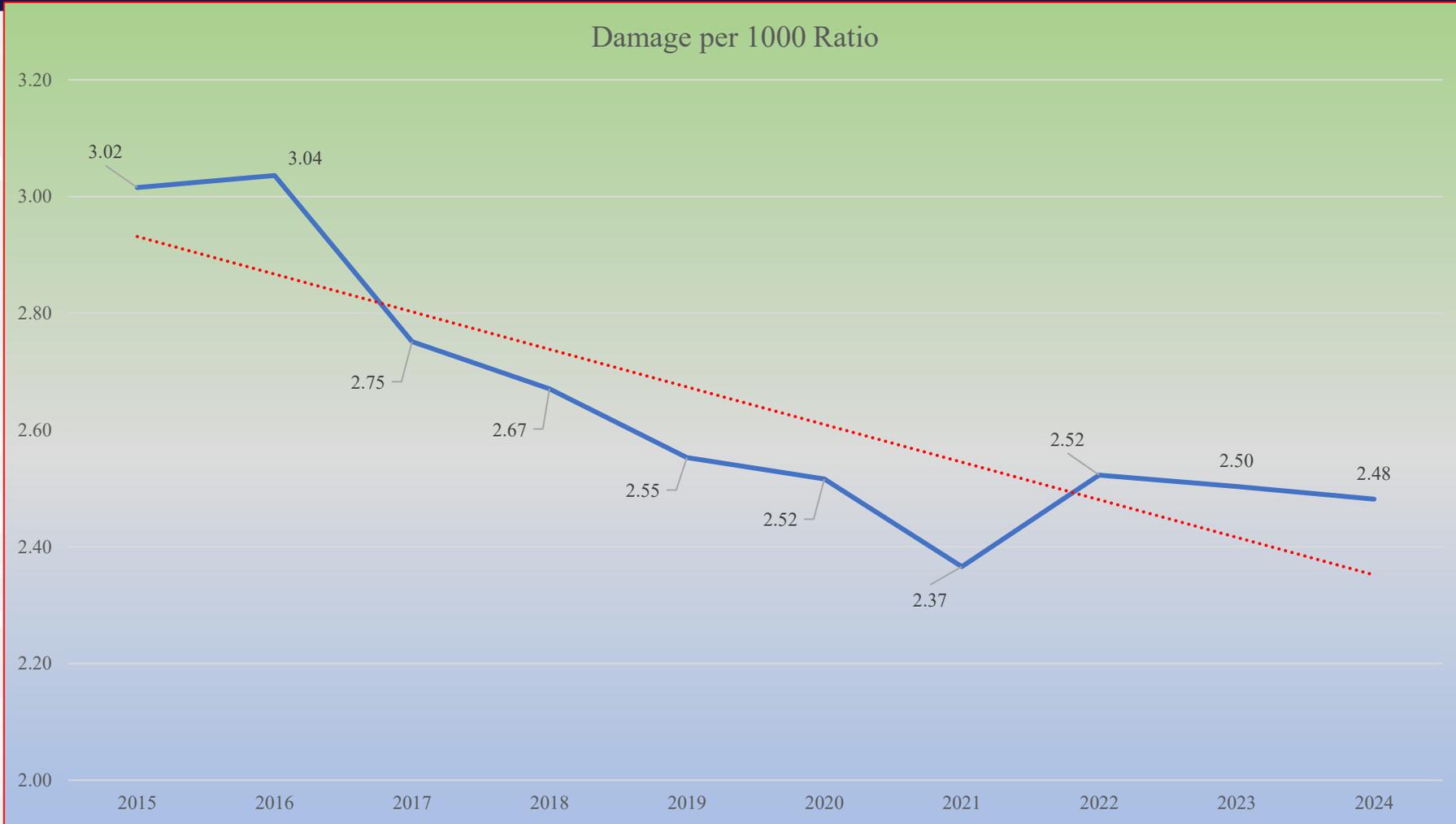
- **Using Data From the Gas Distribution Operator – Why?**
  - **Data is Reliable**
    - Damage and Cause Data Mandated
    - Reported Annually
  - **Best Reflects Excavation Behaviors**
    - Both Excavator and Operator



# Total Damages – Gas Distribution

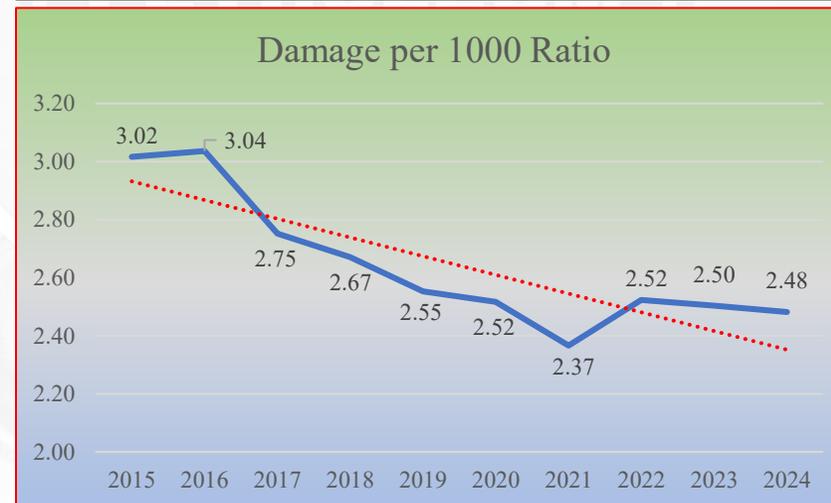
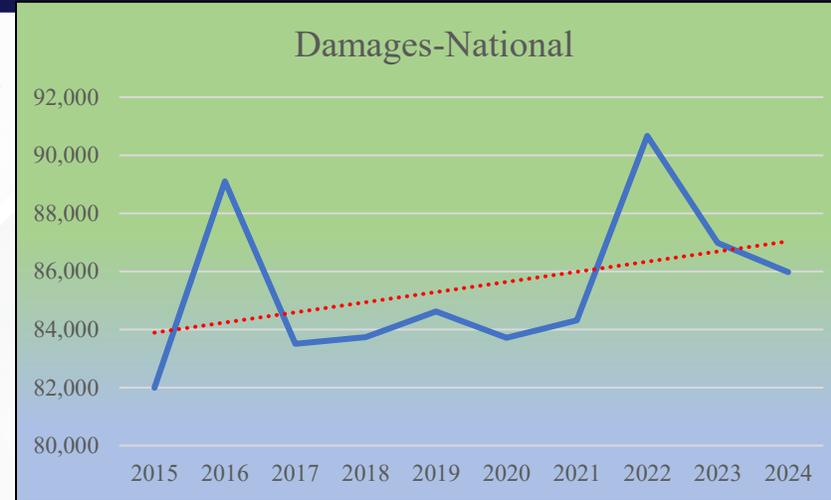
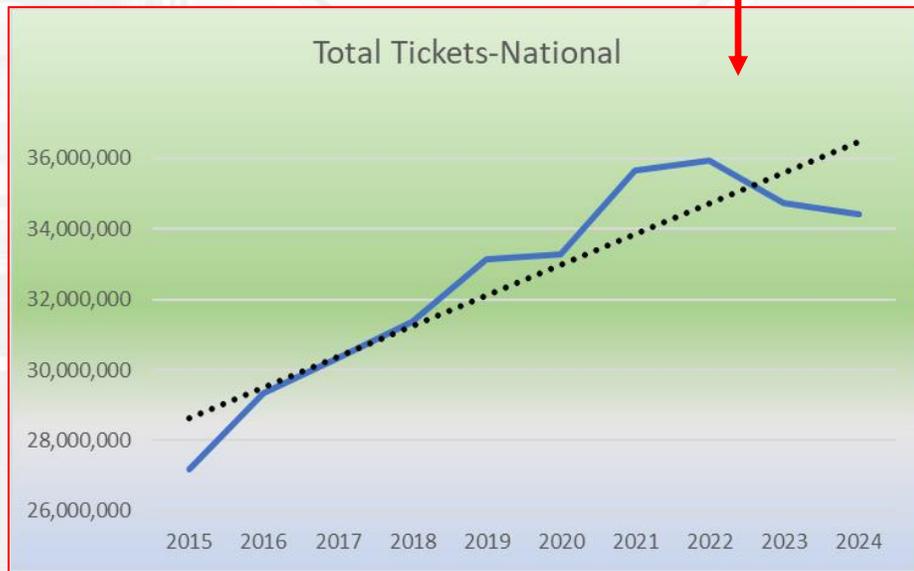


# Damage Ratio – Gas Distribution



# Looking at All Metrics

- Damages and Ratio are Inversely Proportional
- Damages trending up, while Ratio trending down
- Driving Reason – more One-Call Tickets (raises the denominator)



# The Nine Elements

1. Enhanced communication between operators, excavators & *Other Stakeholders*.
2. Fostering support and partnership of all stakeholders
3. Operator's use of performance measures for locators.
4. Partnership in employee training.
5. Partnership in public education.
6. Enforcement agencies' role to help resolve issues.
7. Fair and consistent enforcement of the law.
8. Use of technology to improve the locating process.
9. Data analysis to continually improve program effectiveness.

PIPES Act of 2006 – 109<sup>th</sup> Congress  
49 U.S. Code § 60134(b)



# Element 7

Fair and consistent enforcement of the law.

- *Who are the Stakeholders?*
- *Who represents the Public?*



# Adequacy of State Enforcement

## Background

49 USC § 60114 provides the United States Department of Transportation [PHMSA] with back stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines **in a state that has failed to adequately enforce its excavation damage prevention or one-call laws.**

## 49 CFR Parts 196 and 198

1. Criteria to determine adequacy of State one-call enforcement
2. PHMSA's process to determine adequacy
3. PHMSA's enforcement in states deemed inadequate
4. Adjudication process when enforcement is taken against excavators
  - Final Rule July 13, 2015
  - Effective January 1, 2016
  - Requires annual evaluation



# Annual Evaluation

## *Seven Criterion*

1. Does the State have an excavation damage prevention law?
2. Is there someone designated to enforce?
3. (a) Is the State assessing civil penalties and other appropriate sanctions for violations (b) at levels sufficient to deter noncompliance?
4. Is there a reliable mechanism to learn about violations?
5. Can the State sufficiently investigate excavation damages, and apply enforcement equitably?
6. Does the law prescribe use of 811, safe excavation practices, notification of damages to operator, and 911 if release
7. Does the State appropriately understand, and address, exemptions and/or exclusions from the one-call law.



# Criteria 3 and 5

3. (a) Is the State assessing civil penalties and other appropriate sanctions for violations (b) at levels sufficient to deter noncompliance?
5. Can the State sufficiently investigate excavation damages, and apply enforcement equitably?



# Criterion 3

## *Using Effective Enforcement*

- State “A”
  - 863 Excavation Damages
  - One (1) Training
  - .001 Enforcement to Damage Ratio
  - Damage Per/Thousand = 4.8

- State “B”
  - 700 Excavation Damages
  - 39 Sanctions (Training and Civil Penalty)
  - .05 Enforcement to Damage Ratio
  - Damage Per/Thousand = 0.8

- State “C”
  - 2694 Excavation Damages
  - 59 Sanctions (Training and Civil Penalty)
  - .022 Enforcement to Damage Ratio
  - Damage Per/Thousand = 3.3

- State “D”
  - 2182 Excavation Damages
  - 1890 Sanctions (Training and Civil Penalty)
  - .87 Enforcement to Damage Ratio
  - Damage Per/Thousand = 1.5



# Criterion 5

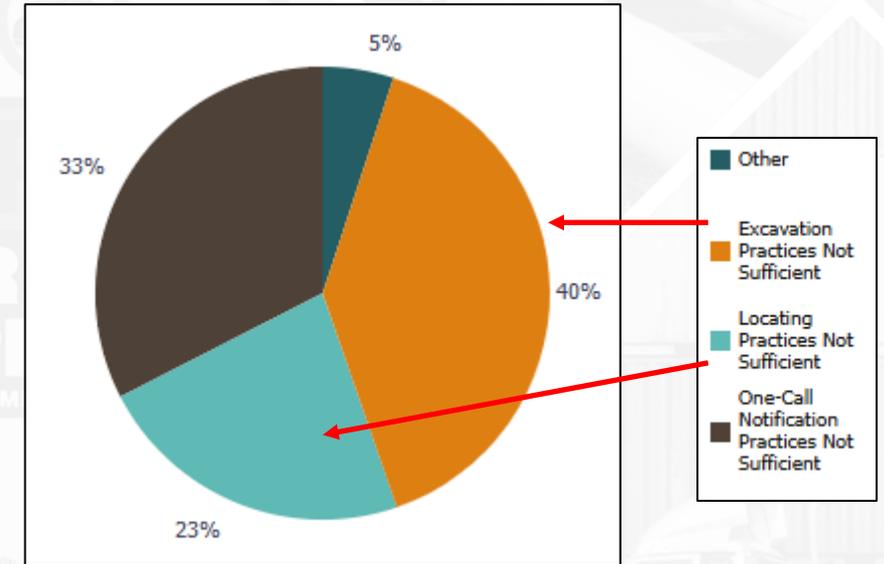
- State “A”
  - 3400 Excavation Damages
    - 32% Attributed to Excavator
    - 24% Attributed to Operator
  - Enforcement
    - 100% Assessed to Excavator
    - 0% Assessed to Operator

3.7

- State “B”
  - 3850 Excavation Damages
    - 47% Attributed to Excavator
    - 25% Attributed to Operator
  - Enforcement
    - 38% Assessed to Excavator
    - 62% Assessed to Operator

2.4

## Balancing Enforcement



# Accountability

## When Comparing to Excavation Safety to Motor Vehicle Safety:

### Excavation Safety:

**There are ~ 0.2 Enforcement Actions for Every One Damage (Includes Civil Penalties and Warnings)**

### Motor Vehicle Safety:

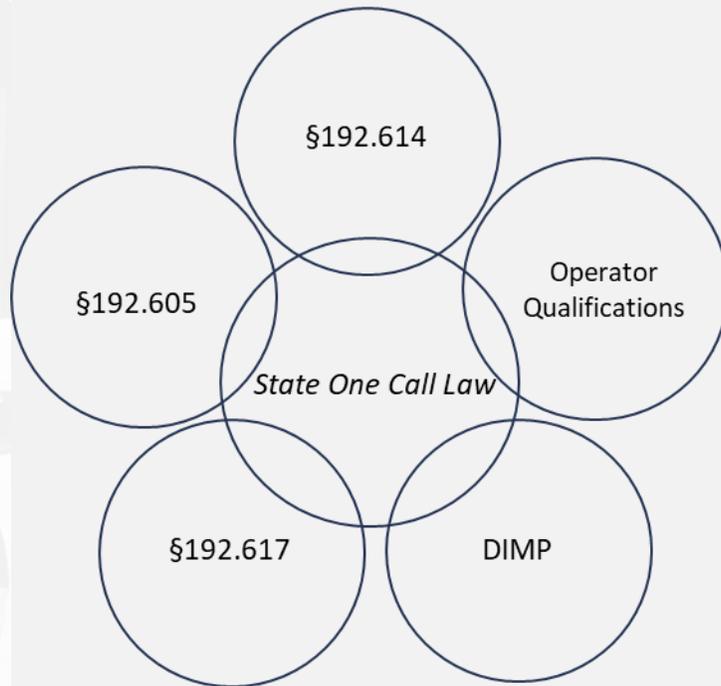
**There are ~ 7.7 Enforcement Actions for Every One Crash (Only Includes Civil Penalties)**

*In Most States Enforcement of One-Call Laws Only Occurs When There is a Damage*



# Accountability: Regulated Operator

For the PHMSA-Regulated Operator, a violation of their state's one-call law often involves a violation of a pipeline safety regulation



- Mapping
- Habitual Offenders
- Miss marks or no shows
- Shallow pipe
- Difficult locates – tracer wire
- Abandoned pipe
- Public Awareness
- Field meets or standby's



# PHMSA Efforts

## In CY 2023 Promulgated a Renewed Focus on Integrity Management Requirements with Special Attention to Excavation Safety

- Met With Gas Distribution Operators and State Partners
- Established Focused Performance Expectations Under DIMP
- Established Cadence of Accountability (Quarterly)

*Total to Date: 11 operators covering eight states  
Represents: 27% of all excavation damages to  
Distribution*



# PHMSA Efforts - Continued

## Focuses on Threats and Mitigations

- Locator On-Time Performance
- No One-Call Ticket (Professional Excavator)
- Ticket Size, Life of a Ticket, and Other Legislative
- Mapping and Unlocatable Facilities

*Collectively Achieving a 10% Reduction in  
Damage per Thousand Ratio*





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**Thank you**

