

2012 State Damage Prevention Program Grants Final Report
CFDA Number: 20.720

Award Number: DTPH56-12-G-PHPS09

Project Title: MD Underground Facilities Damage Prevention Authority State Damage Prevention

Date Submitted: September 30, 2013

Submitted by: James A. Barron

Specific Objective(s) of the Agreement

Under this grant agreement, the MD Underground Facilities Damage Prevention Authority will:

- Laws and regulations of the damage prevention process

Workscope

Under the terms of this grant agreement, the Grantee will address the following elements listed in 49 USC§60134 through the actions it has specified in its Application.

- *Element (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.

Accomplishments for the grant period (Item 1 under Agreement Article IX, Section 9.02 Final Report: “A comparison of actual accomplishments to the objectives established for the period.”)

As noted above our primary objective is enforcement as detailed in *Element (7)* of 49 USC§60134. Now that the website is established; an office, equipment and staff is in place and functional; we have begun to initiate and deliver on-line enforcement capability and implement a complaint review process along with hearing procedures and processes. To date, the Maryland Underground Facilities Damage Prevention Authority (“The Authority”) has received twenty-seven (27) Notices of Probable Violation (NPV) on The Authority Website. The status of those twenty-seven (27) is noted below.

Eight (8) of the twenty-seven (27) have been reviewed and closed for various reasons:

- In two (2) of the eight (8), the complainant could not accurately establish an actual violation of the law and The Authority’s research supported that position.
- In five (5) of the eight (8), the complainant could not accurately identify the probable violator and our research supported that position.
- In one (1) of the eight (8), the complainant withdrew the NPV stating they had made a mistake. We still researched the NPV and found that a violation of the law did not occur.

Nine (9) of twenty-seven (27) went to a hearing before The Authority. Below are the results of those nine (9):

- In one (1) of the nine (9), since no damage occurred, the recommended fines were waived but the probable violator was required to complete damage prevention training through the Maryland/DC Damage Prevention Committee. The Authority ruled that extenuating circumstances prevented the probable violator from working within the strict confines of the law.
- In another one (1) of the nine (9) the recommended fines were waived but the probable violator was required to complete damage prevention training through the Maryland/DC Damage Prevention Committee. The original NPV stated that the probable violator (1) had not called the One Call Center for a ticket and (2) had proceeded with his excavation with “Clear Evidence” of unmarked facilities in the area of the excavation. Through our research, a valid One Call Center Ticket did exist for the probable violator, which negated the first claim of violation. However, there was “Clear Evidence” of marked facilities in the area. Since the probable violator had, prior to the hearing, contacted the facility owner to arrange for training, The Authority ruled to waive the fine in lieu of that training. Furthermore, the probable violator was required to complete additional damage prevention training through the Maryland/DC Damage Prevention Committee.
- The remaining seven (7) of the nine (9) have resulted in a total of \$11,000 in fines being levied along with mandatory damage prevention training through the Maryland/DC Damage Prevention Committee.
 - Four (4) of those seven (7) have been appealed to the Circuit Court. Subtitle 12-113(e) of the Maryland Statue states “A person aggrieved by a decision of the Authority may, within 30 days after receiving the decision, request judicial review of the decision by the circuit court.”
 - The remaining three (3) of those seven (7) are in the process of having fines paid and damage prevention training completed.

Four (4) of the twenty-seven (27) are scheduled for review and decision at the September 11, 2013 meeting of The Authority.

The remaining six (6) of the twenty-seven (27) are still in review and research but are expected to go to review and decision in the October 16, 2013 meeting of The Authority with hearings on the respective NPV’s before the end of 2013.

The Authority is also working with two (2) One Call non-member companies, one (1) One Call non-member Maryland County and one (1) One Call non-member municipality to get them up and running on the designated Maryland One Call System. In addition, The Authority is working closing with the Maryland Association of Counties (MACo) and the

Maryland Municipal League (MML) to identify any of their members who are not members of the designated Maryland One Call System. Then, those associations and The Authority will jointly work with the association members to get them up and running on the designated Maryland One Call System.

The Authority has begun to develop training and outreach programs and material to educate all stakeholders of the existence of The Authority and its mission. Through trade show attendance the message is, in its infancy, getting out to the stakeholders. Specifically, we have attended and had a booth at the summer conventions of MACo and MML. We will also have a booth at the Greater Chesapeake Damage Prevention Convention where we will also be presenting a one (1) hour seminar on “The Authority, Who It Is and What Does It Do”.

The Authority office receives numerous phone calls on a wide range of subjects. Most of the calls concern interpretations of the law and how the law applies to their specific situation. We follow up on all calls, however, because we only have one employee doing investigations we cannot accept NPV’s by phone, although, if the individual does not have Internet access we will complete their NPV for them over the phone and begin the investigation. It is our intent in the future to add staff to actually go into the field to follow up on complaints received both over the Internet and the phone. Budget constraints don’t allow for that level of investigation at this time.

As The Authority began to receive multiple NPV’s we realized software would have to be developed to log, track, present, act upon and close NPV’s. Fortunately, we were able to avoid the very large expense of developing our own software by securing a copy of the software used in the State of Virginia. The only costs we will now incur are to tailor that software to Maryland and provide support for it in the future.

Up to this point, the Public Member of the Authority, free of charge to The Authority, was handling all accounting for The Authority. Since The Authority office is housed in the designated Maryland One Call Center which is owned and operated by One Call Concepts, Inc. we are in the process of moving all financial matters to the accounting department of One Call Concepts, Inc. to (1) remove that duty from the Public Member of The Authority whose term expires on September 30, 2013 and (2) to house total oversight of financial issues to one established accounting entity.

In late July 2013, The Authority advertised for proposals to research and develop an extensive marketing and outreach program. A vendor has been identified for the project. We are now in the process of trying to find adequate funding to initial that project.

Quantifiable Metrics/Measures of Effectiveness (Item 2 under Article IX, Section 9.01 Project Report: “Where the output of the project can be quantified, a computation of the cost per unit of output.”)

The Authority recognizes the need to establish a baseline from which the success of The Authority efforts can be measured quantifiably. Since the focus of our efforts during this grant year was dedicated to getting The Authority up and running and since we are currently restricted

by budgetary issues, no measurable effort has been established in this area. However, in July of 2013 The Authority sent an RFP to multiple firms that have exhibited a history of developing outreach awareness programs along with promotional and educational material in the damage prevention arena. The firm selected has proposed a detailed approach, methodology and programs along with recommended educational and training materials that will position the Maryland Underground Facilities Damage Prevention Authority as a partner and leader in damage prevention in the State of Maryland. Part of that effort will be to establish a baseline and program to measure progress of short and long term goals against that standard. Our legislative intent is "...to protect underground facilities..." in Maryland "...from destruction, damage or dislocation..." and to prevent possible "...death or injury to individuals; property damage to private and public property; and the loss of services provided to the general public." The program suggested by the firm selected will help the Maryland Underground Facilities Damage Prevention Authority achieve its legislative intent. We have already engaged the firm selected to begin to prepare preliminary educational and training materials to be rolled out at the Greater Chesapeake Damage Prevention Convention in October 2013.

Issues, Problems or Challenges (Item 3 under Article IX, Section 9.01 Project Report: "The reasons for slippage if established objectives were not met. ")

As The Authority moved through the second half of the Grant Year and more NPV's were being submitted and as we began to move into the review, hearing and decision phases of an NPV, several older problems continued to need attention as well as several new problems surfaced.

As more and more NPV's were submitted we had to continually update the NPV submission form on the Website. Asking the proper questions in order to receive the most accurate information during the initial submission phase enhances the ease and success of the investigation process on an NPV. Additionally, The Authority has waived the \$250 filing fee until the end of 2013 and, because it appears to be a deterrent in the NPV submission process, it is likely The Authority will waive the fee indefinitely.

The original intent in the establishment of a review and hearing process of Notices of Probable Violation (NPV) was to receive the NPV electronically, research the NPV through multiple modes of investigation, notify the probable violator of a probable violation and their right to a hearing on the NPV, hold the hearing in front of The Authority and then finally rule on the NPV and establish a decision that could result in possible fines and/or training in damage prevention, all to be completed through a very informal process. As The Authority moved into the Hearing phase of an NPV, some probable violators requested to be represented in their hearing by an attorney. Initially The Authority balked on this request, however, through further examination by The Authority legal advisors, it was determined that all hearings conducted by The Authority came under the guidelines of the Maryland Administrative Procedures Act ("APA"). This required The Authority to conduct their hearings in a more formal manner similar to those held in front of Administrative Judges, however, since all testimony comes under oath attorneys can only represent probable violators at the hearings and representatives of the probable violator still have to attend the hearing to present evidence and testimony or face the possibility of failing "...to appear for the scheduled hearing may result in an adverse action against..." the probable violator.

With the arrival of attorneys into our hearing process, we have now had to deal with attorneys who want to argue the constitutionality of The Authority and its powers along with arguments that

conflicts of interest exist between probable violators and appointed members of The Authority. Under APA guidelines, a failure to appear for the scheduled hearing may result in an adverse action against the probable violator.

Obviously, these two issues are not matters to be addressed in our hearing venue but rather at the circuit or appellate court level. The Authority has been gracious in allowing attorneys to briefly discuss these issues in their opening statements but have not allowed these concerns to affect decisions on NPVs. Of course these issues will play out over time and will help define the limits of The Authority and, possibly, dictate whether the Maryland Statute will have to be revisited in future legislative sessions.

Final Financial Status Report

The Final Federal Financial Report (Standard Form SF-425) is attached hereto. A breakdown of line (e.) is shown below. Documentation such as invoices, receipts, spreadsheets, etc. will be forwarded to the GA and GOTR within a week of this September 30, 2013 submission.

	Budget	Total	(Over)/ Under
Personal	0.00	0.00	0.00
Fringe Benefits	0.00	0.00	0.00
Travel	2,600.00	3,816.68	(1,216.68)
Equipment	0.00	0.00	0.00
Supplies	19,500.00	19,583.63	(83.63)
Contractual	59,900.00	54,396.63	5,503.37
Indirect Charges	13,000.00	12,950.00	50.00
Non-Grant Expenses	0.00	1,641.86	(1,641.86)
Total	95,000.00	92,388.80	2,611.20

Requests of the GOTR and/or PHMSA

No actions requested at this time.