

2015 State Damage Prevention Program Grants Progress Report
CFDA Number: 20.720

Award Number: DTPH5615GPPS07

Project Title: State Damage Prevention (SDP) Program Grants – 2015

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Specific Objective(s) of the Agreement

Under this grant agreement, the NM PSB will:

- Develop and implement methods for effective communication
- Foster support and partnership with stakeholders
- Support a Damage Prevention Education Program for industry stakeholders
- Support Public Awareness and Stakeholder Education
- Resolving disputes to define State authority's role
- Enforce the 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 1 (Effective Communications):** 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.
- **Element 2 (Comprehensive Stakeholder Support):** 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.
- **Element 4 (Effective Employee Training):** 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.
- **Element 5 (Public Education):** A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities.
- **Element 6 (Dispute Resolution):** A process for resolving disputes that defines the State authority's role as a partner and facilitator to resolve issues.
- **Element 7 (Enforcement):** 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 this period (Item 1 under Article IX, Section 9.01 Progress Report: “A comparison of actual accomplishments to the objectives established for the period.”)

The PSB has three damage prevention employees whose primary jobs are to investigate excavation damage complaints and to enforce compliance with NM’s State Excavation Laws and Regulations. The SDP grant helps fund their salaries and benefits.

- Element (1) - Under the State Excavation Law, it is mandatory that all owners/operators of underground facilities be members of the local one-call center. There is only one one-call center in New Mexico, NM811 Inc. All excavators must notify the one call center to request locates at least 2 working days (48 hours) before excavating. The one-call center is accessible 24/7 and all locate requests require positive response. NM 811 must, in turn, issue a locate request to each underground facility owner /operator that may be in conflict with the proposed excavation, and the underground facility owner /operator must mark the location of its underground facilities in the proposed excavation area within 48. Facility owners provide mapping data to the one-call center and are required to keep them current. Excavators notify the facility owner directly, thru the one call center, or by contacting the Pipeline Safety Bureau if an underground facility is not marked in a timely manner. Excavators causing damage to an underground facility must notify 911, if needed, the affected facility owner and 811 to initiate a damage report notification. The PSB conducts on-site visits of excavation occurring throughout the state to ensure compliance with the law and provides literature and assistance if excavators or facility owners need clarification about different aspects of the law. The law does not exempt any other underground facility owner other than those exempted by operation of law (e.g., Native American operators on Native American lands).
- Element (2) - NM811, Inc. and the Pipeline safety Bureau (PSB) have taken the lead in improving the state’s damage prevention program. All underground facility owners, except for those exempted by operation of law (e.g., Native American operators operating on Native American lands) are required to be members of the one-call center. The one-call center board of directors is composed of representatives of all stakeholders. An example of a process used to foster partnership in damage prevention is the New Mexico Regional Common Ground Alliance (NMRCGA). The PSB, New Mexico Gas Association, and New Mexico Utility Contractor’s Association (NMUCA) are the NMRCGA founding organizations. Regular meetings are held to address local concerns, best practices, and expo planning. The NMRCGA receives financial and staffs support from the PSB and conducts a bi-annual “excavation damage prevention expo” where excavators, facility owners, local governments, and other stakeholders participate as sponsors, participants, and presenters to exchange information regarding damage prevention. The PSB conducts onsite “tail-gate” training and education at no charge for all parties, including contractors, underground facility owners, and local government entities involved in excavation. NM 811, Inc. conducts extensive training in a classroom setting in communities throughout New Mexico. This program is intended to educate equipment operators, field personnel, the general public, and office/administrative personnel on the requirements of the law and on best practices. A pre and post test is given at the end of the training session and a certificate is issued to those that successfully pass.
- Element (4) – A training program for underground facility , operators, locators and excavators has been developed and several classes are conducted throughout the state each year by NM811, Inc. and mandatory monthly excavation law and procedures classes are conducted for alleged violators by the PSB. PSB damage prevention personnel serve as instructors for some of the NM811, Inc. classes. The PSB has also published training materials, such as the Excavator Handbook, in both English and Spanish, Additional training is also provided by the PSB as needed and/or requested by underground facility owners.

- Element (5) – The PSB has an ongoing public education program to promote the use of the 811 number and to educate the public on the requirement to call the one call center before excavating. The PSB provides education materials, training, and participation with stakeholders to ensure education and damage prevention activities are consistent with federal and state law.
- Element (6) – The Commission encourages underground facility owners/operators and excavators to negotiate and settle disputes arising from damage to underground facilities. If the parties are unable to resolve such disputes the underground facility owners or operators, or excavators may request mediation or arbitration from the Commission through its Pipeline Safety Bureau (PSB). State law provides for Alternative Dispute Resolution (18.60.5.19 NMAC), Mediation of Excavation Damage Disputes (18.60.5.21) The Public Regulation Commission, through its Consumer Complaint Division, also accepts complaints from any stakeholder and the general public and forwards them to the PSB. The PSB must formally address the complaint and resolve it. Resolution of a complaint can range anywhere from a simple clarification of the law requirements to an investigation that results in a civil penalty.
- Element (7) - State Law 18.60.5.1 NMAC thru 18.60.5.22 NMAC and 62-14-2 NMSA thru 62-14-8 NMSA gives the Commission enforcement authority over excavators, one-call centers and underground facility operators. The Commission can assess administrative penalties of up to \$5,000.00 for a first offense and up to \$25,000.00 for subsequent violations. The PSB investigates all damages (damages must be reported) and can initiate on-site citations for violations of the State Excavation Law. The Commission has promulgated rules to allow for an expedited “dispositional” administrative process, in front of a hearing officer or panel, provided the alleged violator agrees to abide by the hearing officer’s or panel’s decision. Based on the information provided by the PSB and the alleged violator, the hearing officer or panel makes a finding (which could include, mandatory training, or a recommended civil penalty). The PSB has developed an effective approach to enforce the excavation law upon alleged violators. The primary focus is to prevent damages from recurring, change excavation behavior and require that all parties comply with regulations and reporting requirements.

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

The grant has allowed the PSB to maintain three full time employees dedicated to damage prevention. One covers Northern New Mexico; one covers Southern New Mexico; and the other covers the Albuquerque Metro area. There have been approximately 1,000 underground utility damages reported to the one call center so far in the reporting period. The investigations conducted by these three employees, have allowed the PSB to enforce compliance upon all stakeholders. Enforcement includes corrective action letters, mandatory training in New Mexico Excavation law and administrative penalties. The damage prevention programs effectiveness is measured by the number of alleged violations made by a single entity and decreasing the number of damages resulting from encroaching the tolerance zone, mis-marks, and failure to call. NM has seen a significant decrease in all three areas over the last year.

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

The NM PSB is on schedule but anticipating an increase in work load during 2016 due to stakeholders becoming more aware of the reporting and compliance requirements and enforcement being implemented. A strong focus on requiring stakeholders to comply with these reporting requirements established in the state excavation law, will result in more investigations and complaints requiring investigations. Our focus areas will be: failure to call 811 prior to

excavation, failure to locate utilities within 2 business days, failure to maintain clearance of marks without prior locating utility by non-mechanical methods.

Mid-term Financial Status Report

Although the grant period is thru September 29, 2016 NM has exhausted all funds and typically requests PHMSA to accept a progress report and final report simultaneously. Due to a new department overseeing this grant, NM will only request 50% as reflected on the Financial Status Report, SF-425.

Plans for Next Period (Remainder of Grant)

The NM damage prevention program will continue conducting investigations of all 3rd party damages, effectively enforce compliance with the NM Excavation Law, continue conducting monthly compliance classes for enforcement and voluntarily compliance, and address all complaints in attempt to prevent damage to underground facilities.

Requests of the AOR and/or PHMSA

NM PSB would like to comment that currently three full time employees are dedicated to improving damage prevention throughout the State and therefore equally important to receive the maximum amount of funding through future SDP grants. It would also be helpful if the SDP grant can be timely consistent with all other pipeline safety state program grants. It can be extremely difficult to manage expenditures since most state operates on a different fiscal year.