

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

Award Number: DTPH5615GPPS06

Project Title: Maryland Underground Facilities Damage Prevention Authority “the Authority” - State Damage Prevention Grant

Date Submitted: January 22, 2015

Submitted by: James A. Barron

Specific Objective(s) of the Agreement

Under this grant agreement, the Authority will enforce:

- Laws and regulations of the damage prevention process

Workscope

Under the terms of this grant agreement, the Recipient will address the following elements listed in the approved application as stated in 49 U.S.C§60134 (b).

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

The enforcement of Maryland state Damage Prevention laws, remains the primary mission of the Authority, through the utilization of a robust Education and Outreach program, strong stakeholder partnerships and adjudicated actions against reported violators of the “Miss Utility” law in Maryland. During the period of the 2015 PHMSA State Program Grant from September 30, 2015 through September 29, 2016, the Authority has continued to step up its efforts in all the above mentioned areas as set forth in the 2015 grant submittal, and has enjoyed a good measure.

During this grant period, the Authority met eleven times (11) (no meeting was held in November), at which thirteen (13) hearings were held at three (3) of those meetings. Ninety-eight (98) Notices of Probable Violation (NPV’s); which represents a seventy-five (75%) percent increase in volume over the same period of reporting for the 2014 State Program Grant. Also, during that time period the Authority collected \$42,400.00 in fines from previous decisions of the Authority.

The Authority successfully submitted to the Maryland General Assembly during its 2016 Legislative Session a piece of legislation that would provide a permanent private sector funding source the Authority. The legislation, which will add five (5) cents to every Miss Utility ticket in the State of Maryland, with the exception of all Maryland counties and municipalities in accordance with the previous agreement in the original Miss Utility law, passed both Chambers of the General Assembly and became law on June 1, 2016. This was a major objective for this grant period and can be counted as a major success for the Authority. It should be noted that the legislation was vetted by all Stakeholders and at the time of introduction was fully supported by all concerned. The initiative enjoyed the full support of all its stakeholders. The Authority has received its first two (2) distributions of \$20,000 each, which have gone into the operating fund and will be used for office upgrades, salaries and the addition of a part-time investigator. Tentative plans for the 2017 legislative session include some house-keeping legislation to clarify the role of the Authority vis-à-vis the Executive Branch of Maryland State Government and its relationship with the Maryland Attorney General's Office; which came about as a result of the MD Court of Appeals ruling regarding the constitutionality of the Authority (*Reliable Contracting v. MUFDP*).

Currently the Authority has nine (9) NPVs amounting to a total of \$17,000.00 fines that the Authority is attempting to collect through the legal process. There are also eleven NPV's (11) that have been placed in an "Incomplete Status"; which means that they have either paid the assessed fine and not participated in Damage Prevention Training or have taken training, but not paid their fines. These NPV's will be on a watch list for future reference. Should any of these companies have a subsequent violation, their lack of training or fine payment will be taken into consideration, when the Authority reviews their next infraction. In addition, all legal actions against the Authority have been closed. In an effort to track down some of our older open cases and violators who persistently ignore the Certified Mail that is sent to them, the Authority has hired a Process Server in order to get the legal documents pertaining to their case in their hands. The Authority has turned to this approach, with remarkable success. Essential to the Authority's quasi-judicial responsibilities as delineated in the Administrative Proceedings Act (APA) is providing "due process" to all violators

The Authority prevailed on constitutional grounds in one (1) case (*Reliable Construction v. MUFDP*), but was found in error on procedural grounds, not on the merits of the cases in the remaining (4) cases. The Authority members voted unanimously to *Stet* the remaining cases from the same complainant (*WSSC/Pinpoint Locating v. MUFDP*). In response to the ruling from the Maryland Court of Special Appeals, the Authority has amended its practices to address any previous deficiencies in its processes; which includes the utilization of (3) statutory standards or benchmarks when assessing the actions of an alleged violator (*MD State Government Article §10-1001*). These benchmarks 1) Seriousness of the Violation, 2) Intent ("good faith") of Violator, and 3) Past history if Violations have been incorporated into a newly developed Standardized Fining Matrix (SFM), which has recently been put into use when Authority staff investigates and assesses a probable violation prior to its presentation to the Authority for review and recommendation. The SFM was developed through a collaborative effort among members of the Authority, as well as stakeholders.

The Authority will again be a Gold Sponsor of the Greater Chesapeake Damage Prevention Training Conference (GCDPTC) held in Ocean City Maryland. This will be the third consecutive year of participation. In an effort to increase its education and outreach program, the Authority undated its display which was used at the 2016 Maryland Municipal League Summer Meeting, the 2016 Maryland Association of Counties Summer Conference and will also be used at the 2016 October meeting of the GCDPTC. A new brochure was developed in-house by the Authority and was professionally reproduced to further explain the Authority's "mission" as well as clearer information regarding the who, why, and when a company or individual should call "Miss Utility"; and how the Notice of Probable Violation (NPV) process works, with step by step instructions which mirror the Authority's web portal for filing NPV's.

The Authority has also purchased additional marketing materials which it freely shares with the Maryland Damage Prevention Committee for maximum distribution. One new item – the "Site Safety Folder" was developed to encourage contractors to place all pertinent project documents, including their Miss Utility ticket/s in one easily recognizable place so that superintendents and crew leaders can have easy access to these important documents on site. The Authority again donated \$25,000.00 for fourth quarter 2016 "811- Call Before You Dig", media buy for the Greater Baltimore/Washington radio market. As before, these spots are also placed in the Spanish speaking market place. The Authority through its Executive director continues to participate in the monthly Damage Prevention Committee meetings, where timely updates are presented to the stakeholders present. The Authority has continued to sponsor and participate in the DPC's quarterly damage preventions training sessions for contractors and service providers, allied to the construction industry. These sessions continue to max out, with attendance always at full capacity.

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

No Quantifiable Metrics/Measures of Effectiveness have been established to-date using the data-driven model outlined and preferred by PHMSA. However, it should be noted that the Maryland Underground Facilities Damage Prevention Authority operates on a "complaint driven" model and as such no empirical data exists to use as a historical benchmark. This issue was discussed at length with PHMSA officials during the Authority's 2016 program review. However, since the inception of the Authority in 2011, the Authority continues to see a steady increase in NPV's, fines collected, training obtained and trends in the types of violations. Failure to call the One-Call System continues to be most prevalent issue in Maryland. Without some sort of mandatory reporting, we don't see a true statistical baseline being established which captures the Authority's effectiveness. The Authority has begun to data share with the Maryland Public Service Commission and those stakeholders who "voluntarily" submit damage reports to the Maryland call center.

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 a result of the MD Court of Appeals ruling regarding the constitutionality of the Authority (*Reliable Contracting v. MUFDP*) in which The Authority prevailed; a number of procedural questions arose regarding the agency’s status. Since the Authority was deemed an agency of the Executive Branch of Maryland government for the purposes of assessing and collecting fines, issue of legal representation by the Maryland Attorney General’s (AG) Office with regard to appeals. On the advice of the Authority’s outside legal counsel, all hearings were suspended for the duration., while the Authority awaited word from the AG’s office as to their willingness or ability to be its representative at the appellate level and certain other matters such as the need to promulgate Rules and Regulations. On September 22, 2106, the AG’s office sent a letter to the Authority stating that in their opinion, the Authority did not qualify for the AG’s representation. There are still unresolved issues in this matter, however the Authority has decided to move forward with hearing in January of 2017; and, will be revamping its rules and procedures to mirror the recent high court ruling and will also begin to promulgate regulations which will be put through the vetting process proscribed by Maryland Rules and Procedures. This issue has put the Authority behind in terms of unresolved cases. However, a resolution to this issue is expected by the end of the year.

Final Financial Status Report

The Final Federal Financial Report (Standard Form SF-425) is attached hereto. A breakdown of line (b.) is shown below. Documentation such as invoices, receipts, spreadsheets, etc. will be mailed via USPS the last week in October 2016.

	<u>2nd Term Expenditures</u>	<u>Final Balance</u>
Travel/ Conference Expenses	\$252.92	\$7.08
Contractual		
• Website Maintenance (OCC, Inc. Invoice # 91516a)	\$3,000.00	\$2,000.00
• Executive Director	\$44,000.00	\$2,000.00
• Office Associate	\$7095.00	\$855.00
Other		
• Gold Sponsorship for GCDPTC (2016 GCDPTC Gold Sponsor)	\$3,000.00	-0-
Indirect		
• Office Rent & Utilities (OCC, Inc. Invoice #91516b)	\$6747.35	\$3747.35
Total	\$64,095.27	(\$8,595.27)

Requests of the AOR and/or PHMSA

“No actions requested at this time”