

**2016 State Damage Prevention Program Grants Final Progress Report**  
**CFDA Number: 20.720**

**Award Number:** DTPH5616GSDP06

**Project Title:** State Damage Prevention (SDP) Program Grants – 2016

**Date Submitted:** September 25, 2017

**Submitted by:** Mr. Jason N. Montoya, Pipeline Safety Bureau Chief

**Specific Objective(s) of the Agreement**

This grant will help fund personnel, fringe benefits, and travel for the Pipeline Safety Bureau Damage Prevention Program (PSB) and allow for effective enforcement of the State excavation law and regulations. The PSB currently has three full time investigators that this grant will fund a portion for. The PSB investigates all excavation damages, excavation and one-call complaints and initiates enforcement actions when deemed appropriate. The PSB also provides state-wide training opportunities for excavators, underground facility owners, one-call members and others involved with planning excavation activities. The PSB will continue to enforce the new white-lining requirement upon the excavating community within incorporated areas or when necessary in non-incorporated areas.

No tolerance enforcement actions have now been expanded to include excavators that don't call 811, underground facility owners that don't mark the horizontal location within the 2 working day period, and any willful violations. The PSB will continue to educate and effectively enforce regulations upon those underground facility owners who fail to locate underground facilities or don't locate within 18" and excavators who don't respect the 18" tolerance zone prior to exposing an underground utility.

**Workscope**

**Under the terms of this grant agreement, the Recipient will address the following applicable elements listed in the approved application, pursuant to 49 U.S.C. §60134 (a),(b).**

- **Element 3 (Operator Internal Performance Measurement): (Not Applicable)**
- **Element 8 (Technology): (Not Applicable)**
- **Element 9 (Damage Prevention Program Review): (Not Applicable)**
  
- **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. **(Applicable)**
- **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. **(Applicable)**
- **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. **(Applicable)**

- **Element 5 (Public Education):** A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities. **(Applicable)**
- **Element 6 (Dispute Resolution):** A process for resolving disputes that defines the State authority's role as a partner and facilitator to resolve issues. **(Applicable)**
- **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. **(Applicable)**

**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 affected underground facility owner /operator registered in the area of the proposed excavation, and the underground facility owner /operator must mark the location of its underground facilities in the proposed excavation area within 2 working days (48 hours) of when the excavation notification is transmitted by the one-call center. Facility owners are required to provide and keep current mapping data to the one call center. Underground facility owners (UFOs) are required to respond to locate requests promptly, and the excavator notifies 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, Federal Facilities, master meter operators).
- 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 operators of non-regulated gathering lines and those exempted by operation of law (e.g., Native American operators operating on Native American lands, Federal Facilities, master meter operators) 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 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. The PSB has partnered with a company to prepare class material and instructors for Spanish speaking attendees. We currently have recurring classes the second Monday of each month and periodically upon request for an entire company, construction crew, or department. The PSB damage prevention personnel serve as instructors for some of the NM811, Inc. classes. We have also contracted with NM 811, Inc. to publish and print training materials, such as the Excavator Handbook, in both English and Spanish. Additional training is provided by the PSB as needed and/or requested by underground facility owners.
- Element (5) – We have 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 laws. Although not included with this grant application, the PSB funds public advertising of the 811 message through local media including April Safe Digging Month celebration, 811 Day at Isotopes Baseball. The PSB also participates in public awareness events conducted throughout the State including a bi-annual Regional Common Ground Alliance conference and expo which PHMSA supports and participates with technical work sessions.
- 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 1,500 underground utility damages reported to the one call center during this 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 program’s 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. NM811 recently transitioned ticket management systems and PSB has adopted a new damage reporting tool, KorInsight, which is more users friendly and captures more data to allow the Regional Common Ground Alliance Committee to review and assess the areas needing attention. The PSB continues to focus on addressing failure to call 811, failure to mark or clear, failure to maintain clearance, and failure to maintain marks. These seem to be the biggest problem areas. The PSB has issued 395 Notice of Probable violation letters tallying \$81,459 in civil penalty assessments. A general summary of statistical information is provided below:

<b>Party</b>	<b>Number of Penalties</b>	<b>Total Amount</b>
Excavators	342	\$69,105
Pipeline Operators	53	\$12,354
One Call	0	0
Locators	0	0

<b>Type of Sanction</b>	<b>Excavators</b>	<b>Operators</b>	<b>Locators</b>	<b>One-Call</b>
Warning letters	115	4	0	0
Training	214	46	0	0
Other	47	4	0	0
Comments: Other includes fine only, corrective action letter, or settlement conference required.				

**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 is experiencing an increase in work load during 2017 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, results in more investigations and complaints requiring investigations. Our focus areas are: 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.

**Final Financial Status Report**

Although the grant period is thru August 31, 2017, NM has exhausted all funds and typically requests PHMSA to accept a progress report and final report simultaneously.

**Plans for Next Period (Remainder of Grant)**

The NM damage prevention program will continue conducting investigations of all 3<sup>rd</sup> party damages, effectively enforcing compliance with the NM Excavation Law, continue conducting monthly compliance classes for enforcement and voluntarily compliance, and addressing 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.