

**2018 State Damage Prevention Program Grants Final Progress Report
CFDA Number: 20.720**

Award Number: 693JK31840021PSDP

Project Title: State Damage Prevention (SDP) Program Grants – 2018

Date Submitted: April 15, 2019

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

Specific Objective(s) of the Agreement

This grant has helped partially fund personnel assigned to 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 partially fund, enabling them to carry out the enforcement element. 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 New Mexico Public Regulation Commission recently approved new rules effective January 1, 2019 that align with best practices and are more prescriptive of the intent and expectations.

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 1 (Effective Communications): (Not 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 3 (Operator Internal Performance Measurement): (Not Applicable)
- Element 4 (Effective Employee Training): Participation by operators, excavators, and other stakeholders in developing and implementing 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): (Not 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)
- Element 8 (Technology): (Not Applicable)
- Element 9 (Damage Prevention Program Review): (Not 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 (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 posttest is given at the end of the training session and a certificate is issued to those that successfully pass with an 80% or better.
- 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 (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 Relations 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 Central New Mexico including the Albuquerque Metro area. There have been approximately 1,074 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 user 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 accurately mark or clear, failure to maintain clearance, failure to maintain marks, and failure to provide a positive response prior to the locate request expiring. These seem to be the biggest problem areas. During the reporting period, the PSB issued 185 Notice of Probable violation letters tallying \$92,260 in civil penalty assessments. A general summary of statistical information is provided below:

Party	Number of Penalties	Total Amount
Excavators	89	\$11,616
Pipeline Operators	19	\$6,872
One Call	0	0
Locators/Utility Owners	77	\$73,772

Type of Sanction	Excavators	Operators	Locators	One-Call
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**AGREEMENT # 693JK31840021PSDP
ATTACHMENT 2A**

Warning letters	23	1	8	0
Training	28	7	14	0
Other	12	6	31	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 continues to experience an increase in work load during 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 September 27, 2019, NM has exhausted all funds and typically requests that PHMSA 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 3rd 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 which are on a calendar year. It can be extremely difficult to manage and report breakdowns and expenditures since most states operate on fiscal years. NM's approved SDP grant allocation has experienced significant decreases over the last several years.