

2019-2020 State Damage Prevention Program Grants FINAL Progress Report
CFDA Number: 20.720
KENTUCKY

Award Number: 693JK319NF0004

Project Title: "State Damage Prevention (SDP) Program Grants – September 2019- September 2020

Date Submitted: December 16, 2020

Submitted by: Melissa C Holbrook KY Gas Program Manager

SPECIFIC OBJECTIVE(S) OF THE AGREEMENT

Fund enforcement, education, training, communication, support, analysis, partnership, and mediation activities associated with its damage prevention program. (Elements 1-9)

WORKSCOPE

- *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 3 (Operator Internal Performance Measurement)"A process for reviewing the adequacy of a pipeline operator's internal performance measures regarding persons performing locating services and quality assurance programs." (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)*
- *Element 8 (Technology) "A process for fostering and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications,*

underground pipeline locating capability, and gathering and analyzing information about the accuracy and effectiveness of locating programs." (Not applicable)

- *Element 9 (Damage Prevention Program Review) "A process for review and analysis of the effectiveness of each program element, including a means for implementing improvements identified by such program reviews." (Applicable)*

WORK SCOPE 9-29-2019 until 9-27-2020

Under this grant agreement, the program has allowed the salary of one damage prevention investigator to complete the investigations, training, and outreach and implementing each element. The enforcement of the Kentucky Dig Law has been effective for little over one year for the KYPSC that is greatly enhancing our efforts in Kentucky's commitment to damage prevention. The grant funds have assisted the KYPSC in the administration of the program.

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."

The Kentucky Public Service Commission has established a robust outreach and education campaign to spread the word about damage prevention and the Commission's enforcement program. Monthly damage prevention training classes are provided for violating parties as an enforcement resolution and partial penalty diversion option. These classes are held at the Commission's offices and include an opportunity for attendees to discuss their questions and concerns with the investigator. In addition, the Commission provides free damage prevention training to any company requesting it. This training is conducted state-wide at any location designated by the company. In the fall of 2019, the Commission was the primary funding sponsor, along with Kentucky 811 and the four state Damage Prevention Councils for five mock line strike events. These half-day training sessions focused on the correct and incorrect methods of line locating, excavation and emergency response. The target audience was public officials, first responders, excavators, municipalities and operators and their third party locating contractors. 641 people attended these mock line strikes.

In 2019 the Commission started offering damage prevention training classes for violating parties, 322 individuals have attended training. The Commission provided free on-site damage prevention training to the employees of four companies, including a municipal utility. A total of 164 individuals attended those trainings.

In 2020 the Commission offered three in person damage prevention training classes for violating parties. Covid restriction's stopped in person training at the commission. Commission staff has conducted seven virtual remedial courses with 89 people attending.

Commission staff are actively seeking opportunities to provide damage prevention training to trade-groups. This is done by participation in damage prevention councils, and through contacts made at regularly scheduled training classes. Additionally, the possibility of offering training at required continuing education events for electricians and plumbers is

being explored at this time. This is a direct result of dialogue with trade's people at a regularly scheduled monthly training at the Commission's offices.

Commission staff are regular attendees and presenters at regional damage prevention councils throughout the state. The investigator for which this funding is used has prepared and delivered to the regional damage prevention councils a presentation detailing the Commission's investigation process, and engaged participants in dialogue concerning enforcement of the Underground Facilities Damage Prevention Act.

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."

See Element 1

Continued participation in each of the regional damage prevention councils is crucial to keeping stakeholders informed of the Commission's activity and initiatives, as well as keeping the Commission informed of the concerns of other stakeholders. In 2019 Commission staff attended 20 damage prevention council meetings, 18 training classes, and Kentucky Gas Association Underground Damage Enforcement Roundtable, Annual Tristate 811 Party in Safety, and Midwest Damage Prevention Training Conference.

In 2020 Commission staff attended 7 in person damage prevention councils meetings, Texas and Tennessee Damage Prevention Summit, 811 Booth at Home & Garden Show.

ELEMENT 3 – OPERATOR INTERNAL PERFORMANCE MEASUREMENT

"A process for reviewing the adequacy of a pipeline operator's internal performance measures regarding persons performing locating services and quality assurance programs."

In 2019 the Commission started offering damage prevention training classes for violating parties, 322 individuals have attended training. The Commission provided free on-site damage prevention training to the employees of four companies, including a municipal utility. A total of 164 individuals attended those trainings. In 2020 two employers have already contacted the Commission and requested training for their employees. Those trainings have been scheduled at times and locations convenient for the employer.

In 2020 the Commission offered three in person damage prevention training classes for violating parties. Covid restriction's stopped in person training at the commission. Commission staff has conducted seven remedial courses with 89 people attending.

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."

Commission staff are actively seeking opportunities to provide damage prevention training to trade-groups. This is done by participation in damage prevention councils, and through

contacts made at regularly scheduled training classes. Additionally, the possibility of offering training at required continuing education events for electricians and plumbers is being explored at this time. This is a direct result of dialogue with trade's people at a regularly scheduled monthly training at the Commission's offices. This year the Commission plans to also seek opportunities to provide underground facility damage prevention training to individuals licensed through the Kentucky Department of Housing, Buildings, and Construction.

The Commission conducts free training on underground facility damage prevention available to any employer requesting it. Commission staff travel to any location state-wide to present this training. In 2019 5 training classes were conducted at the public service commission and 13 were conducted with operators.

In 2020 damage prevention staff provided virtual training to Kentucky Gas Association, Damage prevention councils statewide, and Louisville high school plumbing vocational class.

ELEMENT 5 – PUBLIC EDUCATION

"A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities."

In the fall of 2019, the Commission was the primary funding sponsor, along with Kentucky 811 and the four state Damage Prevention Councils for five mock line strike events. These half-day training sessions focused on the correct and incorrect methods of line locating, excavation and emergency response. The target audience was public officials, first responders, excavators, municipalities and operators and their third party locating contractors. 641 people attended these mock line strikes.

In 2020 the Commission regularly disseminates press releases and other forms of public information, notably a radio spot campaign utilizing the University of Kentucky Sports Network targeting average citizens regarding the requirement to call before you dig but focusing on the enforcement program that is now implemented and the repercussions of failing to comply with Kentucky's Underground Facility Damage Prevention Act.

The Commission also publishes on its homepage information on the number of pipeline damages reported to it by operators in any given month.

Commission staff attended the 2020 Louisville Home and Garden Show along with Kentucky 811 and distributed information to the public on the importance of calling before you dig. These materials were printed in English and in Spanish.

The investigator funded by this grant accepted an invitation to read to an elementary school classroom and distributed cards explaining the utility color-coded marking system.

ELEMENT 6 – DISPUTE RESOLUTION

"A process for resolving disputes that defines the State authority's role as a partner and facilitator to resolve issues."

The DOI-s developed Standard Operating Procedures (SOP) to define the investigative process to be used to ensure each reported damage is thoroughly investigated. This process includes a requirement and process for all jurisdictional natural gas and hazardous liquid operators to report all damages to their facilities through the Commission's website. Each operator is required to register with the Commission to receive a unique login for providing their report.

A report is provided online with requested information relating to each damage to their facility. Upon receiving a submitted report, the investigator assigned to the case will ensure the information provided is complete, request the KY811 locate request ticket associated with the damage reported, and confirm the reported alleged damaging party is a viable entity registered with the Kentucky Secretary of State. The alleged damaging party is then contacted by the investigator. Upon making a determination of the responsible party, a Demand Letter will be issued, outlining the results of the investigation and the penalty associated with the case. If the responsible party is not in agreement with resolution of the case, the responsible party may request a formal Administrative Hearing before the Commission. If after having being heard and the responsible does not agree with the decision of the Commission, a case will be filed in Franklin County Circuit Court.

The Commission holds administrative hearings regularly once a month to consider those cases in which an alleged violator has been assessed a civil penalty by the investigator, but has not paid the penalty. After receiving notice of several alleged violations of the Underground Facility Damage Prevention Act, an operator requested an administrative hearing to potentially obtain a global resolution to the alleged violations. The Commission granted the request for a hearing and the operator, the Commission's Division of Inspections, and excavators provided testimony. The Commission recently issued a final order in the proceeding. The state damage prevention grant period from September 2019 until September 2020 has allowed the Kentucky Public Service Commission to utilize grant funds to enhance the ability to investigate pipeline damages in addition to assisting the KY PSC in the development and administration of the enforcement program. During the grant period, the KY PSC damage prevention staff has assisted in the enforcement program that has received 627 third party damage reports. Of those reports 589 damage incidents have been investigated, in which 448 were closed, and 141 resolved. The KY PSC damage prevention division has issued 347 demand letters and collected \$807,650.00 in penalties during the grant period.

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.

As of July 14, 2018, the Commission implemented a formal enforcement process that includes: the required reporting of damages to natural gas or hazardous liquids lines by the operator; investigation of these damages by the Commission; assessment and collection of civil penalties for violations; and other judicial action beyond the scope of the Commission (Franklin Circuit Court) should the Commission's informal enforcement action fail to render compliance. Penalties are addressed in the state law: KRS 367.4917 (1) An excavator who fails to comply with any provision of KRS 367.4911, or an operator who fails to comply with any provision of KRS 367.4909, shall be guilty of endangering underground facilities and may be subject to a fine of two hundred and fifty dollars (\$250) for the first offense, no more than one thousand dollars (\$1,000) for the second offense within one (1) year, and no more than three thousand dollars (\$3,000) for the third and any subsequent offense. (2) A protection notification center that fails to comply with any provision of KRS 367.4913 shall be subject to a fine of one thousand dollars (\$1,000) for each offense. (3) A person that knowingly provides false notice to a utility

notification center of an emergency as defined in KRS 367.4903 shall be subject to a fine of one thousand dollars (\$1,000) for each offense. (4) Any person who violates any provision of the Underground Facility Damage Prevention Act of 1994, KRS 367.4901 to 367.4917, that involves damage to a facility containing any flammable, toxic, corrosive, or hazardous material or results in the release of any flammable, toxic, corrosive, or hazardous material shall be subject to a fine not to exceed one thousand dollars (\$1,000) for each offense. The penalties of this subsection are not in conflict with and are in addition to civil damages for personal injury or property damage.

(5) (a) All fines recovered for a violation of this section shall be paid to the general fund of the state, county, city, or fire protection agency which issued the citation. As of 2020 we have collected \$1,274,699.63 in civil penalties has been assessed for violations of Kentucky's Underground Facilities Damage Prevention Act. All penalties are used for the support of the Damage Prevention Public Outreach and Education Program and in no way augment the Commission budget as it relates to salaries or administrative costs.

If an alleged violator contests the findings of the investigator, the Commission will hear the facts of the case at a formal administrative hearing. The Commission conducted hearings in January, February, and September 2020.

The Commission has sought enforcement of its orders regarding penalties in Franklin Circuit Court four in 2019 and seven in 2020.

ELEMENT 8 - TECHNOLOGY

"A process for fostering and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications, underground pipeline locating capability, and gathering and analyzing information about the accuracy and effectiveness of locating programs."

Element 8- N/A

ELEMENT 9 – DAMAGE PREVENTION PROGRAM REVIEW

"A process for review and analysis of the effectiveness of each program element, including a means for implementing improvements identified by such program reviews."

Program effectiveness is measured on a weekly basis through tracking of new reports received, investigations initiated, enforcement actions completed and penalties assessed/collected. These statistics will be compared on a monthly basis once a more robust data set is complete and a full calendar year cycle has been accomplished to account for variability in seasonal activity in the excavation community. We anticipate seeing a reduction in violations of KRS 367.4901-4917 due to aggressive and consistent enforcement activity.

Also see "Attachment B"

Quantifiable Metrics/Measures of Effectiveness ("Where the output of the project can be quantified, a computation of the cost per unit of output.")

The enforcement of the Kentucky Dig Law has been effect for little over a one year for the KYPSC that is greatly enhancing our efforts in Kentucky's commitment to damage prevention. The grant funds have assisted the KYPSC in the administration of the program.

For 2019 DOI staff have received over 1075 cases of reported damages from our jurisdictional natural gas and hazardous liquid operators. DOI staff have investigated and closed 625 cases issuing 380 Demand Letters resulting in \$ 1,031,650.00 in penalties assessed and collected \$ 972, 00.00. The 2019 data indicates that the responsible party has been determined to be approximately: Contractors/Excavators: 242, Utility Operators: 208, Home Owners: 45, Municipality: 18, Utility: 18, State Agency: 4.

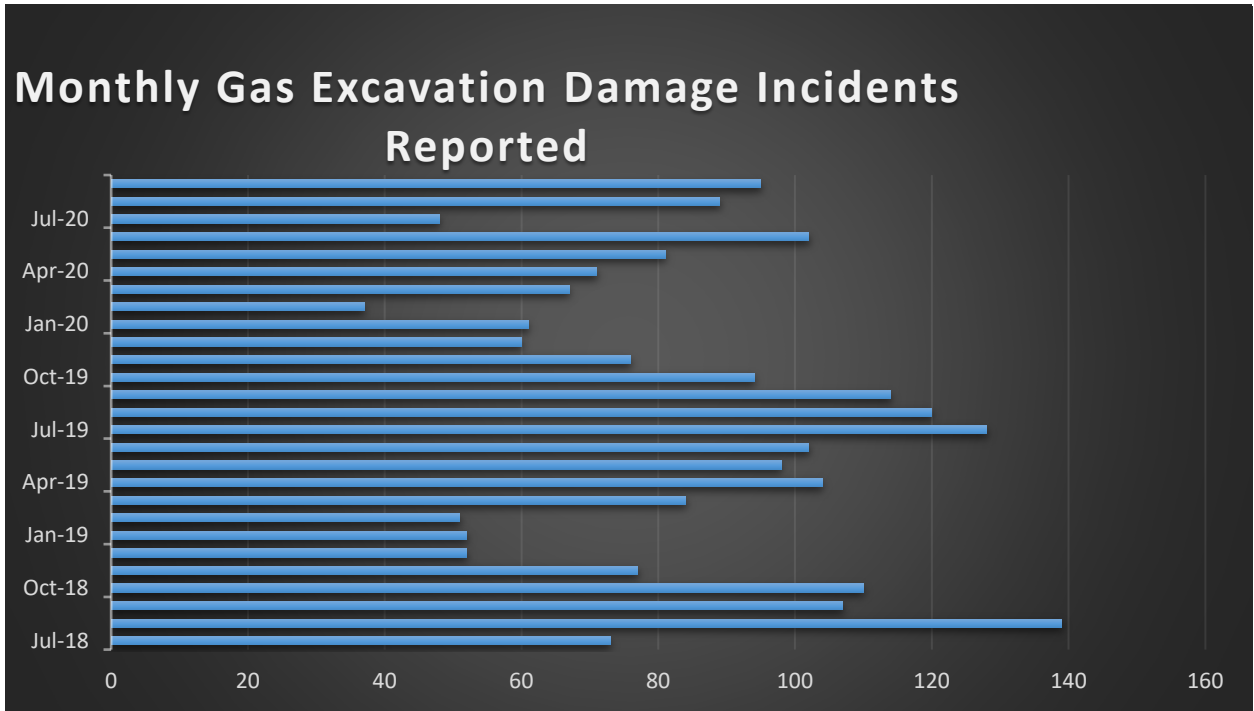
For 2020 Staff has received 867cases of reported damages from our jurisdictional natural gas and hazardous liquids operators. DOI staff have investigated and closed 315 cases issuing 214 demand letters, 3 warning letters resulting in \$1,274,699.63 in penalties we have collected. The 2020 data indicates the responsible party has been determined to be approximately: Contractors/Excavators:54,UtilityOperators:155, HomeOwners:17, Municipality:0,Utility:4,StateAgency: 0.

Issues, Problems or Challenges

The program was implemented and has been in effect for twenty eight months with few issues and staff is very comfortable with our existing procedures moving the program forward. Our greatest challenge has been the lack of dedicated staff to perform the investigative work. Existing DOI staff have been conducting the investigations and charged to the grant to move the program forward until such time dedicated investigative staff are hired. The additional challenge associated with this issue is the resulting backlog of damage cases submitted awaiting investigation. Two investigators have been hired in 2019 has begun their dedicated work and will be instrumental in reducing this backlog and will be able maintain an acceptable level of pending cases. Due to an overwhelming amount of reports and only two investigators working full time there is a backlog in 2020. Due to the Covid -19 the Commission has not been able to do any in person training and education.

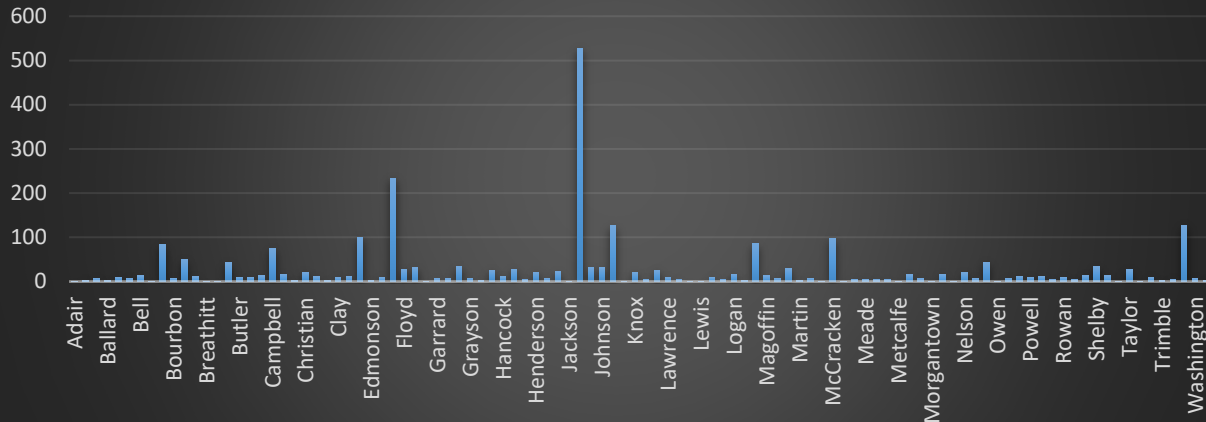
Requests of the AOR and/or PHMSA - N/A

ATTACHMENT B – Third Party Damage Data



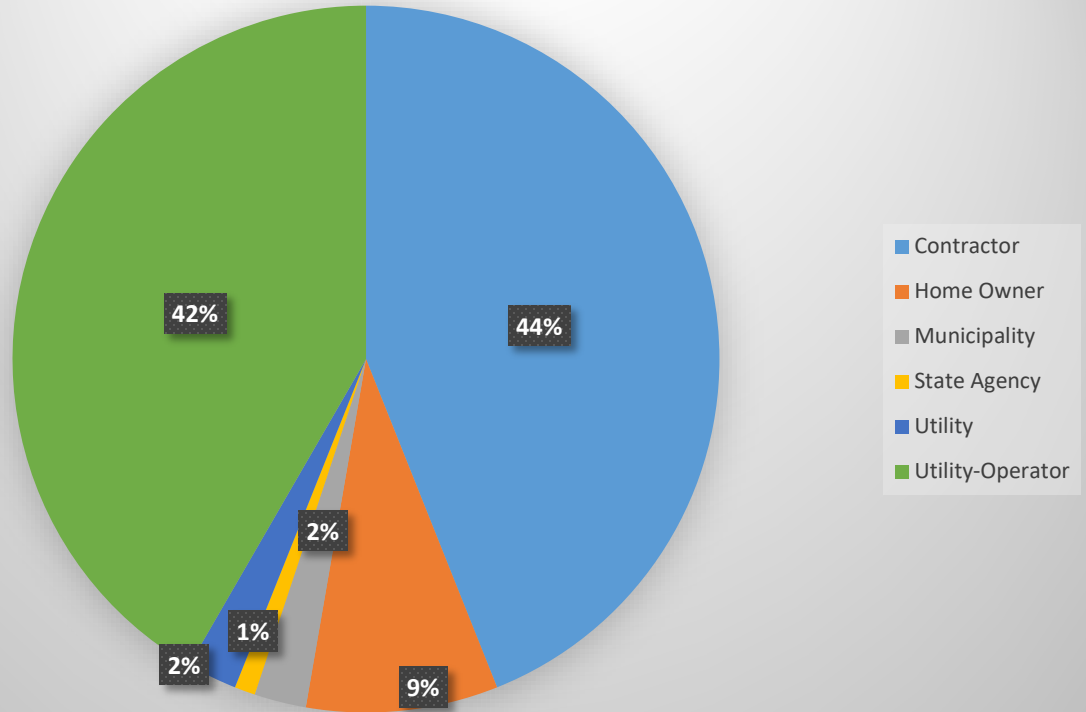
Monthly	Incidents Reported		
Jul-18	73	Mar-20	67
Aug-18	139	Apr-20	71
Sep-18	107	May-20	81
Oct-18	110	Jun-20	102
Nov-18	77	Jul-20	48
Dec-18	52	Aug-20	89
Jan-19	52	Sep-20	95
Feb-19	51	Oct-20	88
Mar-19	84		2380
Apr-19	104		
May-19	98		
Jun-19	102		
Jul-19	128		
Aug-19	120		
Sep-19	114		
Oct-19	94		
Nov-19	76		
Dec-19	60		
Jan-20	61		
Feb-20	37		

of Incidents Per County



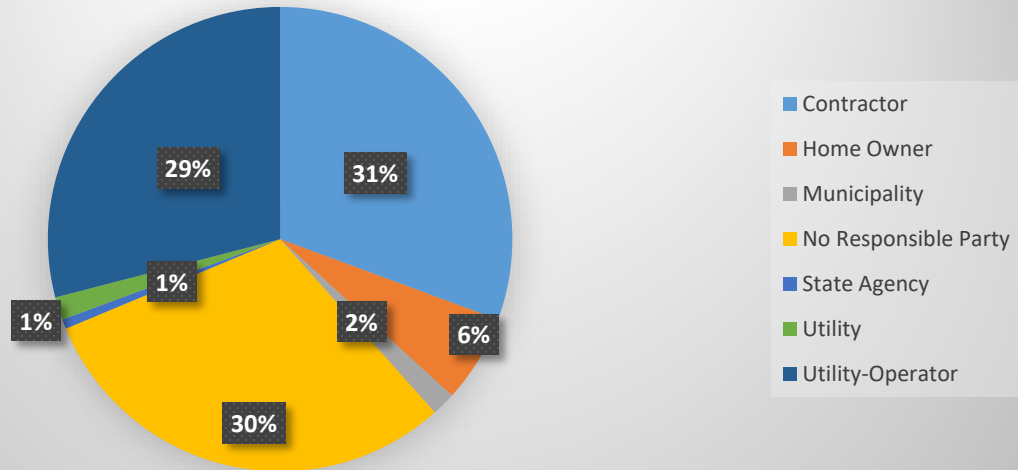
County	Incidents								
Adair	1	Daviess	100	Larue	5	Morgantown	1	Whitley	13
Allen	3	Edmonson	2	Laurel	25	Muhlenberg	17	Wolfe Co.	1
Anderson	7	Estill	9	Lawrence	9	N/A	1	Woodford	10
Ballard	2	Fayette	234	Lee	4	Nelson	20		
Barren	10	Floyd	27	Leslie	1	Ohio	7		
Bath	7	Franklin	31	Lewis	1	Oldham	44		
Bell	13	Gallatin	1	Lincoln	10	Owen	1		
Blair Town	1	Garrard	6	Livingston	4	Pendleton	7		
Boone	84	Grant	6	Logan	17	pike	12		
Bourbon	8	Graves	33	Lyon	3	Powell	10		
Boyd	49	Grayson	8	Madison	85	Pulaski	12		
Boyle	11	Green	2	Magoffin	13	Robertson	4		
Breathitt	1	Greenup	25	Marion	7	Rowan	10		
Breckinridge	1	Hancock	11	Marshall	29	Russell	4		
Bullitt	42	Hardin	28	Martin	2	Scott	14		
Butler	10	Harrison	4	Mason	8	Shelby	33		
Caldwell	10	Henderson	21	McClean	1	Simpson	13		
Calloway	13	Henry	7	McCracken	97	Spencer	1		
Campbell	74	Hopkins	22	McCreary	1	Taylor	27		
Carroll	17	Jackson	1	McLean	5	Todd	1		
Carter	2	Jefferson	528	Meade	5	Trigg	9		
Christian	21	Jessamine	31	Menifee	4	Trimble	2		
Clark	11	Johnson	31	Mercer	4	Union	5		
Clarke	2	Kenton	126	Metcalf	1	Warren	127		
Clay	9	Knott	1	Montgomery	15	Washington	7		
Crittenden	12	Knox	21	Morgan	6	Webster	3		

Responsible Party



Party	Number of Cases	
Contractor	556	46%
Home Owner	111	9%
Municipality	30	3%
State Agency	12	1%
Utility	29	3%
Utility-Operator	527	38%

Responsible Party



Party	Number of Cases	
Contractor	556	32%
Home Owner	111	6%
Municipality	30	2%
No Responsible Party	550	31%
State Agency	12	1%
Utility	29	2%
Utility-Operator	527	26%

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