

**2020 State Damage Prevention Program Grant Mid-Term Progress Report  
CFDA Number: 20.720**

**Award Number:** 693JK32040006PSDP

**Project Title:** State Damage Prevention (SDP) Program Grants FY2020

**Date Submitted:** 4-12-2021

**Submitted by:** Myra Kelemen, Financial Reports. Melissa Holbrook, Progress Report

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

Pay for Costs for one full-time damage prevention investigator to investigate damages to regulated pipeline facilities. (Element 7, Priority 1)

**WORK SCOPE 2020 UNTIL MARCH 29, 2021**

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.

In 2020, before COVID-19 restrictions were implemented, KY PSC damage prevention investigators conducted damage prevention training with Kentucky high school plumbing vocational classes, attended the 2020 Louisville Home and Garden Show, and distributed information to the public on the importance of calling before you dig, and attended an elementary school classroom.

Due to the COVID-19 pandemic, in March 2020 the KY PSC offices were closed and all employees were instructed to work from home. At this time all in person training was put on hold. PSC worked quickly to develop and implement live virtual trainings. In 2020, KY PSC damage prevention investigators conducted 11 virtual damage prevention training classes for violating parties, 157 individuals have attended training. In 2020, the damage prevention investigators conducted a virtual damage prevention training for the KY Gas Association, as well as virtually attended all state damage prevention council meetings.

In 2021, the damage prevention investigators have conducted 2 virtual damage prevention

trainings for violating parties with 86 individuals attending the training. An investigator has conducted one in-person damage prevention training session for the City of Paintsville. 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 2020, damage prevention investigators attended virtual trainings and state damage prevention virtual council meetings. Due to COVID-19 restrictions all in person trainings were put on hold. Investigators attended the virtual damage prevention conferences. As COVID-19 restrictions ease, damage prevention investigators have conducted one training in 2021. In-person trainings will be considered when operators and organizations allow visitors in buildings. As of April 2021 PSC still has some COVID-19 restrictions for in-person meetings.

## **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 2020, the Commission offered 11 damage prevention training classes for violating parties, 157 individuals have attended training. The Commission provided free on-site damage prevention training to the employees of utility and organizations. In 2020 due to COVID-19 restrictions, training was conducted virtually. In 2021, due to a municipality whom was a repeat offender, an in person training was conducted.

## **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 also plans to 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 2020, two trainings were conducted in person before COVID-19 restrictions went into place. As a result, virtual meetings and trainings were conducted after that time. In 2021, one in-person meeting was conducted with Paintsville Utilities.

#### **ELEMENT 5 – PUBLIC EDUCATION**

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

In 2020, the Commission regularly disseminated 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. In addition, a program was developed and implemented with the KY Transportation Cabinet on the importance of Call Before you dig and locating practices.

In 2021, contracts are in place to spend \$350,000.00 of the penalty money collected on radio spots, billboards across the state, and a professional training video for damage prevention that operators, utilities, and excavators that can be used for safety training.

#### **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

**AGREEMENT 693JK32040006PSDP  
NOFO 693JK320NF0006  
ATTACHMENT 2**

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.

In 2020, 954 cases of instances of underground facility damage have been reported to the Commission. The Commission has investigated 626 of these and made an initial determination whether any violation occurred. Of these, 626 instances have been closed, meaning the alleged violator paid a civil penalty or the investigator determined no violation had occurred.

In 2021, 168 cases of instances of underground facility damage have been reported to the Commission. The Commission has investigated 111 of these and made an initial determination whether any violation occurred. Of these, 44 instances have been closed, meaning the alleged violator paid a civil penalty or the investigator determined no violation had occurred. Due to backlog of cases some 2020 cases were worked in 2021.

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. In 2020, the Commission heard three cases the hearings were conducted virtually due to COVID-19 restrictions.

In 2021, nine cases are scheduled to go to hearing in April.

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.

#### **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, \$ 1,475,100.00 in civil penalties has been assessed and \$1,350,750.00 and 2021 \$ 362,350.00 assessed and \$253,650.00 has been collected 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 conducts these hearings once a month. In 2020, three cases have been heard by the Commission. In 2021, nine hearings are scheduled in April.

The Commission has sought enforcement of its orders regarding penalties in Franklin Circuit Court with seven cases in 2020 and none as of 2021.

#### **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.

During training, inspections, and outreach, the Commission encourages and promotes web ticket entry, the use of GPS coordinates, CGA best practices, electronic white lining, and electronic mapping. Also, the Commission has encouraged operators with no tracer wire to purchase new equipment and use technology to detect pipelines.

#### **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. The Final Report of this grant will include a more complete data comparison.

David Appelbaum with PHMSA conducted a state excavation damage prevention law enforcement program evaluation on 6-18-2020 Kentucky Received a score of 258/258.

**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.")

This grant funds one damage prevention investigator. Due to COVID-19, 2020 was a tough year from closing down offices, working from home to no in-person meetings. KY PSC came together and put a plan in order to move all trainings and penalty trainings to virtual.

In 2020 the damage prevention program accomplished the following:

- Received 954 Cases of third party damage
- Worked 626 Cases of third party damage
- Assessed \$1,475,100.00 in penalties
- Collected \$1,350,750.00 in penalties
- Successfully completed 11 virtual penalty trainings which 157 violators attended
- 3 Hearings were conducted which investigator testified
- Conducted virtual training for KY Gas Association
- Pre-COVID-19, conducted training with high school, elementary schools, and home and garden show.
- Developed and implemented training for KY Transportation cabinet.
- 811 Law Radio Spots paid with penalty money.

In 2021 the damage prevention program accomplished the following:

- Received 134 Cases of third party damage
- Worked 151 Cases of third party damage (includes backlog from 2020)
- Assessed \$ 253,650.00 in penalties
- Collected \$ 362,350.00 in penalties, some collected from 2020 cases.
- Successfully completed 2 virtual penalty training which 86 violators attended
- 9 Hearings are scheduled for violators in April 2021.
- KY PSC is currently signing contract to spend \$350,000.00 and more of penalty money on Damage Prevention Radio Spots, Billboards, and developing/sharing a professional damage prevention training video to share with operators, excavators, and other utilities.

### **Quantifiable Metrics/Measures of Effectiveness**

The enforcement of the Kentucky Dig Law has been in effect for two years for the KYPSC is greatly enhancing our efforts in Kentucky's commitment to damage prevention. Without the funds from the grant, the program would struggle to exist. None of the penalties collected are to be used to fund the KY Damage Prevention Program. Many aspects of the damage prevention program are tracked to

**AGREEMENT 693JK32040006PSDP**  
**NOFO 693JK320NF0006**  
**ATTACHMENT 2**

measure the effectiveness of the program, such as repeat offenders, gas operators not properly reporting damages or mislocates. After data is collected and reviewed, the staff decides a plan of action such as training, public education for a target audience or county, or if the operator needs to be referred to the gas program manager for inspection and hearing.

Also, the state performance metrics are reviewed annually. Please refer to data below.

<b>County</b>	<b>Number of Incidents</b>
Adair	1
Allen	4
Anderson	8
Ballard	2
Barren	11
Bath	8
Bell	15
Blair Town	1
Boone	94
Bourbon	9
Boyd	60
Boyle	14
Bracken	2
Breathitt	1
Breckinridge	1
Bullitt	44
Butler	7
Caldwell	12
Calloway	13
Campbell	71
Carroll	20
Carter	4
Christian	22
Clark	12
Clarke	2
Clay	10
Crittenden	12
Daviess	108
Edmonson	3
Estill	10
Fayette	257
Floyd	26
Franklin	32
Gallatin	1
Garrard	6

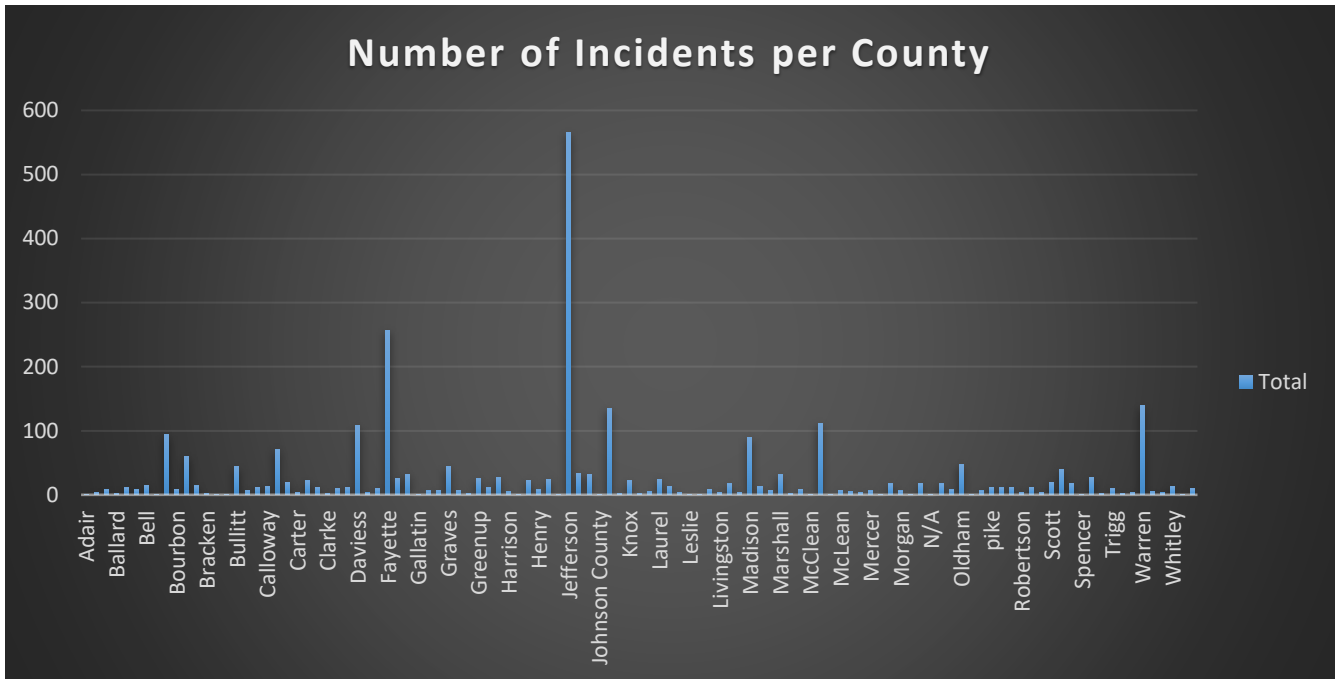
**AGREEMENT 693JK32040006PSDP**  
**NOFO 693JK320NF0006**  
**ATTACHMENT 2**

Grant	7
Graves	44
Grayson	7
Green	2
Greenup	25
Hancock	11
Hardin	27
Harrison	5
Hart	1
Henderson	23
Henry	8
Hopkins	24
Jackson	1
Jefferson	565
Jessamine	34
Johnson	32
Johnson County	1
Kenton	135
Knott	2
Knox	22
KY	2
Larue	5
Laurel	24
Lawrence	13
Lee	4
Leslie	1
Lewis	1
Lincoln	9
Livingston	4
Logan	17
Lyon	4
Madison	90
Magoffin	13
Marion	7
Marshall	31
Martin	2
Mason	9
McClean	1
McCracken	112
McCreary	1
McLean	7
Meade	5
Menifee	4
Mercer	6
Metcalfe	1

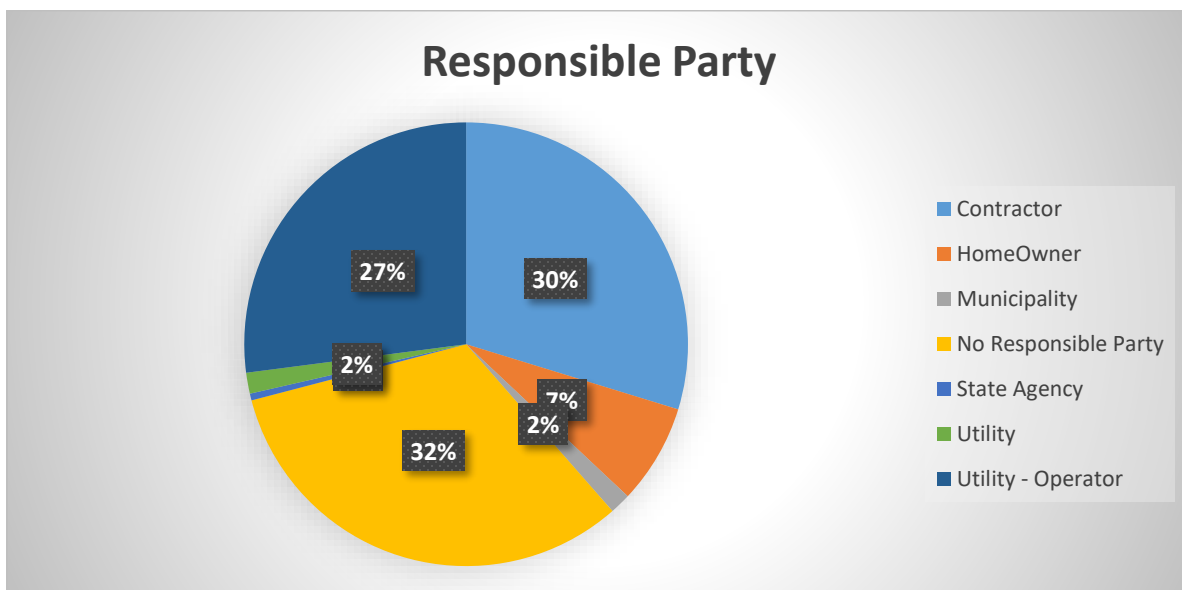


**AGREEMENT 693JK32040006PSDP**  
**NOFO 693JK320NF0006**  
**ATTACHMENT 2**

Montgomery	17
Morgan	6
Morgantown	1
Muhlenberg	18
N/A	1
Nelson	17
Ohio	8
Oldham	47
Owen	1
Pendleton	6
pike	12
Powell	11
pulaski	12
Robertson	4
Rowan	12
Russell	4
Scott	20
Shelby	40
Simpson	18
Spencer	1
Taylor	27
Todd	2
Trigg	10
Trimble	2
Union	4
Warren	139
Washington	5
Webster	3
Whitley	13
Wolfe Co.	1
Woodford	10
<b>Grand Total</b>	<b>2724</b>



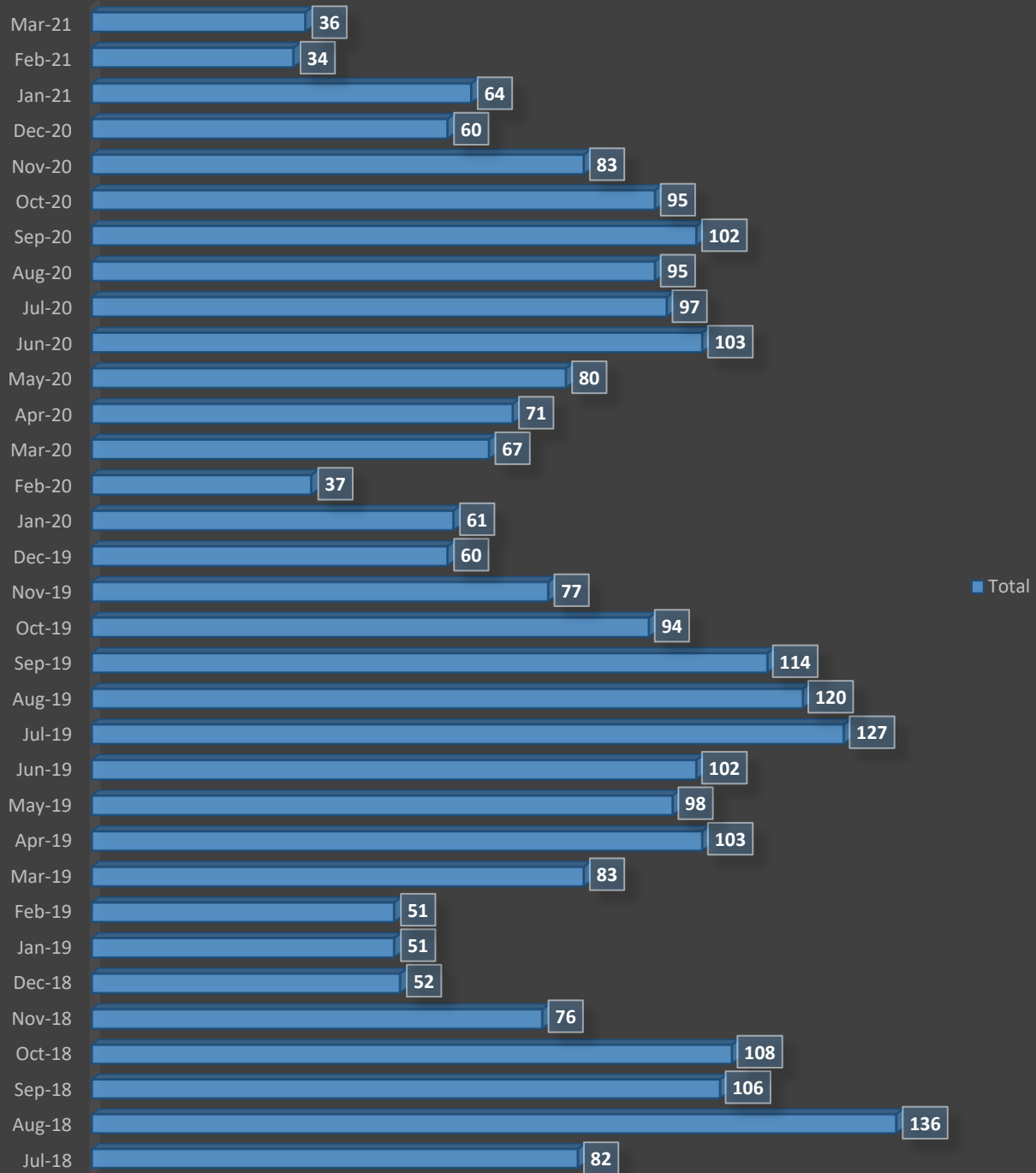
Responsible Party	Number of Cases
Contractor	663
HomeOwner	162
Municipality	34
No Responsible Party	722
State Agency	11
Utility	34
Utility - Operator	603
<b>Grand Total</b>	<b>2229</b>



**AGREEMENT 693JK32040006PSDP**  
**NOFO 693JK320NF0006**  
**ATTACHMENT 2**

<b>Incident Month</b>	<b>Count of Incident Month</b>
Jul-18	82
Aug-18	136
Sep-18	106
Oct-18	108
Nov-18	76
Dec-18	52
Jan-19	51
Feb-19	51
Mar-19	83
Apr-19	103
May-19	98
Jun-19	102
Jul-19	127
Aug-19	120
Sep-19	114
Oct-19	94
Nov-19	77
Dec-19	60
Jan-20	61
Feb-20	37
Mar-20	67
Apr-20	71
May-20	80
Jun-20	103
Jul-20	97
Aug-20	95
Sep-20	102
Oct-20	95
Nov-20	83
Dec-20	60
Jan-21	64
Feb-21	34
Mar-21	36
<b>Grand Total</b>	<b>2725</b>

## MONTHLY INCIDENT TOTALS



**Issues, Problems or Challenges**

The program was implemented and has been in effect for two years with few issues, and the 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.

Currently, KY PSC has 418 reported incident for which investigations not begun (backlog). This is due to only two investigators and difficulty determining the responsible party due to the party's failure to respond or return correspondence, and the excessive time required to close a case and move on to others due to this. At this time, due to COVID-19 restrictions, in-person training is on limited basis.

**Mid-term Financial Status Report**

Refer to Financial Attachment

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

For the remainder of the grant one investigator funded by grant is fully dedicated to complete investigations and enforcement. Currently all trainings are held virtually. As COVID-19 restrictions ease, the plan is to restart in-person trainings.

**Requests of the AOR and/or PHMSA**

None