

**2020 State Damage Prevention Program Grants Progress Report**  
**CFDA Number: 20.720**

**Award Number:** 693JK32040013PSDP

**Project Title:** State Damage Prevention (SDP) Program Grant – 2020

**Date Submitted:** April 15, 2021

**Submitted by:** Mr. Jason N. Montoya, PRC Chief of Staff; Pipeline Safety Bureau Chief

**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. (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): A process for reviewing the adequacy of a pipeline operator's internal performance measures regarding persons performing locating services and quality assurance programs. (Not 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. (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): 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. (Not Applicable)

## **Accomplishments for this period (See Reporting Requirements Sections of your Agreement)**

The PSB has three full-time damage prevention investigators whose primary jobs are to investigate excavation damage complaints and to enforce compliance with NM's State Excavation Laws and Regulations. The PSB's program manager and two administrative support members also contribute towards our damage prevention efforts. The SDP grant helps fund their salaries and benefits, thus enabling them to carry out all of the elements of its damage prevention program. NM has a robust damage prevention program which has consistently been deemed "adequate" by PHMSA. The PSB investigated all excavation damages, excavation, and one-call complaints, and initiated enforcement actions when deemed appropriate.

- 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 staff support from the PSB and conducts an 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. and the PSB conduct extensive training in a classroom setting in communities throughout New Mexico and the PSB has also implemented instructor-led online NM Excavation Law and Procedures classes complete with audience participation to continue to safely provide information and be available to excavators, underground facility owners, one-call members and others involved with planning excavation activities. 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 and the classes are provided free of charge.. A pre- and post-test is given at the training session and a certificate of successful attendance is issued to those that successfully pass with an 80% or better. Classes are conducted in English; however, upon request, accommodations are made and classes in Spanish are held. To further our comprehensive stakeholder support efforts, every year the PSB Investigators and Program Manager participate in approximately 27 Paradigm, Public Awareness and Damage Prevention meetings throughout New Mexico with operators, local emergency and public officials, as well as excavators and the general public to educate and assist operators with focused compliance efforts.
- Element (4) – A training program for underground facility operators, locators and excavators has been developed and classes are conducted upon request throughout the state each year by PSB and NM811, Inc. and mandatory monthly excavation law and procedures classes are conducted for alleged violators by the PSB. In addition, the PSB has also implemented, instructor-led online NM Excavation Law and Procedures classes complete with audience participation to continue to safely provide information and be available to excavators, underground facility owners, one-call members and others

involved with planning excavation activities. The PSB has partnered with a company to prepare and provide class material and instructors for Spanish-speaking attendees. We currently have recurring classes the second Monday of each month and upon request will conduct a class for an entire company, construction crew, or department. The PSB damage prevention personnel serve as instructors for some of the NM811, Inc. classes. The PSB has also contracted with NM 811, Inc. to publish and print training materials, such as the Excavator Handbook, in both English and Spanish and the PSB has both the English and Spanish versions of the NM Excavator Handbook posted to the PSB Web-page for easy reference. Additional training is provided by the PSB as needed and/or requested by underground facility owners. All training and materials are provided free of charge.

- Element (6) – The NM Public Regulation Commission “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 then formally addresses the complaint and resolves 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 education to prevent damages from recurring, change excavation behavior, and require that all parties comply with regulations and reporting requirements.

**Quantifiable Metrics/Measures of Effectiveness (“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 investigators 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. In addition, the grant has allowed for the Program Manager and two administrative support staff members who also support the damage prevention program. There have been approximately 1,193 underground utility damages reported to the one call center during this reporting period (09/28/20 – 03/27/2021). The investigations conducted 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. NM has a robust damage prevention program consistently deemed “adequate” by PHMSA. The PSB investigates all excavation damages,

excavation, and one-call complaints, and initiates enforcement actions when deemed appropriate. 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 few years. NM811 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. For the reporting period, the PSB will have issued a total of 149 Notice of Probable violation and Warning letters tallying \$49,171.00 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	89	\$23,860
Pipeline Operators	10	\$10,061
One Call	0	0
Locators/Utility Owners	60	\$25,311

<b>Type of Sanction</b>	<b>Excavators</b>	<b>Operators</b>	<b>Locators</b>	<b>One-Call</b>
Warning letters	15	0	8	0
Training	47	3	6	0
Other	16	7	46	0
Comments: Other includes fine only, corrective action letter, or settlement conference required.				

#### **Issues, Problems or Challenges (“The reasons for slippage if established objectives were not met.”)**

The NM PSB is on schedule but continues to experience an increase in workload 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.

#### **Mid-term Financial Status Report**

A summary of the activities performed during this period were provided above under the Quantifiable Metrics/Measures of Effectiveness section. Although the grant period is thru September 27, 2021, NM has exhausted all funds and 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 to work to educate the public and industry stakeholders on damage prevention while conducting investigations of all 3<sup>rd</sup> party damages and effectively enforcing compliance with the NM Excavation Law. PSB personnel will conduct compliance classes online and will once again be conducting in-person classes when it is safe to do so, for enforcement and voluntarily compliance, and will address all complaints in attempt to prevent damage to underground facilities. Our focus areas will continue to be 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, and failure to provide a positive response prior to the locate request expiring..

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

NM PSB would like to comment that currently three full time employees, the program manager, and two administrative staff members are dedicated to improving damage prevention throughout the State and therefore it is important to receive the maximum amount of funding through the SDP grants. It would also be helpful if the SDP grant performance period can be 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.