

2012 State Damage Prevention Program Grants Final Report
CFDA Number: 20.720

Award Number: DTPH56-12-G-PHPS18

Project Title: NM Pipeline Safety Bureau State Damage Prevention

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Specific Objective(s) of the Agreement

Under this grant agreement, the NMPSB will:

- Develop and implement methods for effective communication
- Foster support and partnership with stakeholders
- Support a Damage Prevention Education Program for industry stakeholders
- Support Public Awareness and Stakeholder Education
- Resolving disputes to define State authority's role; and
- Laws and regulations of the damage prevention process
- Foster and promote the use of Improving Technologies
- Review the Effectiveness of Damage Prevention Programs

Workscope

Under the terms of this grant agreement, the Grantee will address the following elements listed in 49 USC §60134 through the actions it has specified in its Application.

- *Element (1):* Participation by operators, 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.
- *Element (2):* 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.
- *Element (4):* 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.
- *Element (5):* A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities.
- *Element (6):* A process for resolving disputes that defines the State authority's role as a partner and facilitator to resolve issues.
- *Element (7):* 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.
- *Element (8):* 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 (9):* A process for review and analysis of the effectiveness of each program element, including a means for implementing improvements identified by such program review.

Accomplishments for the grant period (Item 1 under Agreement Article IX, Section 9.02 Final 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 the State Excavation Laws and Regulations. The funds will be used for a portion of each employee’s salary.

- Element (1) Under the State Excavation Law, it is mandatory that all owner/operators of underground facilities be a member of the local one-call center, there is only one one-call center in New Mexico, NM811 Inc. All excavators must call/fax or e-mail 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 underground facilities 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 of the One-Call center receiving the locate request from the excavator. Facility owners must provide mapping data to the one-call. Underground facility owners (UFO) are encouraged to respond to locate requests promptly, and the excavator notifies the facility owner directly or thru the one-call center if an underground facility is not located. Excavators causing damage to an underground facility must notify 911 if needed, the facility owner and NM811. PSB conducts on-site visits of excavation occurring throughout the State of New Mexico to ensure compliance with the law and provide literature and assistance if excavator or facility owner need clarification about different aspects of the law. The excavation law does not define non-regulated gathering lines as underground facilities and operators of those facilities are exempt from requirement to be a member of NM811. 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 land).
- Element (2) NM811 and the Pipeline safety Bureau (PSB) have taken the lead in improving the state 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 land), are required to be members of the one-call center. The NM 811 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 chapter of the National Utility Contractor’s Association are the NMRCGA founding organizations. Regular meetings are held to address local concerns and best practices. The NMRCGA receives financial support from PSB and conducts an annual “excavation damage prevention expo” where excavators, facility owners, local governments, and other stakeholders participate as sponsor, 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 facilities owners, and local government entities involved in excavation. NM 811 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 test is given at the end of the one-day session and a certificate is issued to those that successfully pass the quiz.
- Element (3) this is work in progress. Since 2010 we began reviewing pipeline operator’s damage prevention programs to see if they have quality assurance programs in place, the

- performance measures used to ensure compliance, and that corrective action is taken when needed. The PSB conducts on-site inspection of records, and operation and maintenance procedures to ensure adequate procedures are in place for locating and marking underground facilities. That review includes a review of documentation to show that the operator damage investigations considered applicable causes and contributing factors. A new electronic damage prevention violation tracking system has been implemented which allows examination of hit, near-miss, and other damage prevention practices to identify problem areas. This allows preventive measures and education to be designed for identified problems area. The tracking system applies to all underground facility owners.
- Element (4) training program for underground facility owners, operators and locators has been developed and several classes are conducted throughout the state each year by NM811. PSB damage prevention personnel serve as instructors for some of the classes. We have also contracted with NM811 to publish and print training materials in both English and Spanish, and with the New Mexico Underground Contractor Association to provide field training on excavation law. Additional training is also provided by the Pipeline Safety Bureau for excavators and underground facility owners. PSB personnel have been conducting onsite “tail-gate” training and education at no charge for all parties, including contractor, underground facility owners, and local government entities involved in excavation. This project will permit PSB personnel to continue training and instruction to excavators and 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 requirements to call NM811 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 law.
 - Element (6) The Commission encourages underground facility owners/operators and excavators to negotiate and settle dispute arising from damage to underground facilities. If the parties are unable to resolve such dispute the underground facility owner or operators, or excavator may request mediation or arbitration from the Commission through its Pipeline Safety Bureau (PSB). State law provides for Alternative Dispute Resolution (18.60.5.19NMAC), Mediation of Excavation Damage Dispute (18.60.5.19NMAC), and Binding Arbitration of Excavation Damage Dispute (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 result in 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 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 citation for violation 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).
 - Element (8) The Pipeline Safety Bureau has contracted with NM 811 to provide a direct link to the New Mexico Damage Information Reporting Tool database from the Common Ground Alliance web site and web access to the field, This will allow us to upgrade existing electronic forms to be used for reporting instances of third party damage, track

trends, and generate reports that will be used to evaluate the effectiveness of our excavation damage prevention program. The data generated will be used to evaluate the effectiveness of our, training program. One-call Law, excavator and facility operators' compliance. The data will also be used to identify and document any needed program improvements.

- Element (9) The PSB has developed a Damage Reporting Tracking System (DRETS) that allows contractors and owner operators to report a damage when it happens. The system alerts the PSB immediately and a deployment procedure policy is followed. This system will measure the effectiveness of our program and let staff know what enforcement in those areas needs to be taken.

Quantifiable Metrics/Measures of Effectiveness (Item 2 under Article IX, Section 9.01 Project 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. Responsibilities are split between two employees and one covers Northern New Mexico and one covers Southern New Mexico. These employees have conducted over twenty (20) Excavation Law and Procedure Classes and have issued approximately 80 Notice of Probable Violation letters and 25 Field Citations. Approximately 500 excavators and underground facility owners/operators have attended training on the State excavation law and procedures. \$6,366.00 in civil penalties was assessed during the project period. The damage prevention programs 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.

Issues, Problems or Challenges (Item 3 under Article IX, Section 9.01 Project Report: “The reasons for slippage if established objectives were not met.”)

The NM PSB is on schedule but anticipating an increase in work load during 2013 due to new procedures for compliance and enforcement being implemented. A strong focus on requiring stakeholders to comply with the reporting requirements established in the state excavation law, will likely result in more investigations and complaints requiring investigations.

Final Financial Status Report

Although the grant period is thru October 2013, all funds have been exhausted and a Final Financial Status Report, SF-425 has been submitted to the GOTR and GA.

Requests of the GOTR and/or PHMSA

No action requested at this time. However, 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.