

**2013 State Damage Prevention Program Grants Progress Report**  
**CFDA Number: 20.720**

**Award Number:** DTPH56-13-G-PHPS16

**Project Title:** New Mexico Pipeline Safety Bureau State Damage Prevention Grant

**Date Submitted:** April 25, 2014

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

**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 (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.
- **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.
- **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.
- **Element 5 (Public Education):** A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities.
- **Element 6 (Dispute Resolution):** A process for resolving disputes that defines the State authority's role as a partner and facilitator to resolve issues.
- **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.
- **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.

**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 compliance with NM’s State Excavation Laws and Regulations. The SDP grant helps fund their salaries and benefits.

- Element (1) - Under NM’s 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 business 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 excavation 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 business days after being notified by the one call center. Facility owners must provide mapping data to the one-call. Underground facility owners are encouraged to respond to locate requests promptly, and the excavators are required to verify a positive response has been provided prior to conducting excavation activities. Excavators causing damage to an underground facility must immediately stop construction and notify 911, if needed, the facility owner and 811. 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 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 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 partners. Regular meetings are held to address local concerns and best practices. The NMRCGA receives financial support from PSB and conducts a bi-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 (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 and PSB. PSB damage prevention personnel serve as instructors for some of the

classes. The PSB has 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 PSB for excavators and underground facility owners as an enforcement action. 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.

- Element (5) – The PSB has 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. The PSB has also implemented guidelines to enforce the call 811 before you dig message at a “no-tolerance” item.
- 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 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 PSB 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. The Damage Reporting and Enforcement Tracking System (DRETS) has been implemented since June 2013 and is a web-based program which allows affected utilities, excavators and others involved with a damage to enter 3<sup>rd</sup> party damage reports which are required by statute within 30-days. Approximately 1700 damages were reported during CY2013.

**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 200 Compliance Actions and 15 Field Citations. Approximately 300 excavators and underground facility owners/operators have attended training on the State excavation law and procedures. \$4,122.00 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 2014 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 September 2014, 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.