

**DAMAGE PREVENTION BOARD
VIDEOCONFERENCE MEETING**

Thursday – January 24, 2019 – 9:30 a.m. (MST)

**Division of Building Safety
1090 East Watertower Street, Suite 150, Meridian
1250 Ironwood Drive, Suite 220, Coeur d’Alene
2055 Garrett Way, Building 1, Suite 4, Pocatello**

MINUTES OF THE JANUARY 24, 2019 MEETING

NOTE: The following report is not a verbatim transcript of the discussions at the meeting; however, it is intended to record the significant features of those discussions.

Chairman Jeffrey Diehl called the meeting to order at 9:30 a.m. (MST)

Board Members Present:

Jeffrey Diehl, Chairman
Jerry Piper, Vice-Chairman
Mark Van Slyke
Roy Ellis
Julie Maki
Nichole Rush
Scott Spears
Jeanna Anderson
Bob Chandler
Joe Leckie
Vaughn Rasmussen

DBS Staff Members Present:

Chris L. Jensen, Administrator
Spencer Holm, Deputy Attorney General
Adam Bowcutt, Regional Manager, Region 3
Jerry Peterson, Energy Program Manager
Amy Kohler, Compliance Program Specialist
Renee Bryant, Administrative Assistant 2

◆ **Open Forum**

AGC Proposed Bill – Wayne Hammon, Idaho Associated General Contractors (AGC), spoke to a handout on proposed changes to Idaho Code Title 55 Chapter 22 *Underground Facilities Damage Prevention*. Incorporated into AGC’s bill is language from three bills DBS entered on the Board’s behalf to the 2019 legislature, as well as language written by Nancy Stricklin, Association of Idaho Cities (AIC), on service laterals. Mr. Hammon emphasized this bill will be brought before the 2019 legislative session.

Topics addressed under open forum are informational only; therefore, the Board is unable to provide feedback or take any action at meetings. It was suggested holding a special meeting to address this issue.

◆ **Approval of the January 24, 2019 Agenda**

The Chairman explained adding an item to the agenda within 48 hours of the start of a meeting requires a motion and second to amend the agenda, a good faith reason why the item

was not included in the original agenda, and a vote adopting the amended agenda. The good faith reason why the item was not included in the original agenda is DBS was not aware action item 4 *Revision to Statutory Proposal--RS26445* would need to be addressed by the Board until less than 48 hours before the commencement of the meeting.

When asked, the Division did not have supporting documentation for the action item; however, the language in Idaho Code § 55-2205(3) was included in the draft bill provided by Mr. Hammon.

MOTION: Scott Spears made a motion to adopt the amended agenda with the explanation that DBS was not aware of this legislative change until within the last 48 hours. Joe Leckie seconded. All in favor, motion carried.

◆ **Approval of the December 17, 2018 Special Draft and November 29, 2018 Draft Meeting Minutes**

MOTION: Bob Chandler made a motion to accept the minutes from the December 17, 2018 special meeting and November 29, 2018 regular meeting. Vaughn Rasmussen seconded. All in favor, motion carried.

When an agenda is revised it is posted on the Division's website. At the request of Board Member Vaughn Rasmussen, future revised agendas will be included in the packet on the website as well.

◆ **Administrative Appeal Hearing**

Knife River--DAM1810-0014 – Jesse Rosin represented Knife River, Compliance Program Specialist Amy Kohler represented DBS, Terry Harpt represented Intermountain Gas, and Deputy Attorney General Spencer Holm was the facilitator. With no objection from Mr. Rosen, the Chairman approved the introduction of Exhibits A through L into the record. All parties were sworn in and provided testimony to DAM1810-0014, violation of IDAPA 07.10.01.020.01.h *Precautions to Avoid Damage*. Knife River did not dispute the violation; however, was appealing the \$5,000 civil penalty. When asked, Mr. Rosen expressed \$1,000 to \$1,500 would be a reasonable value for the fine.

MOTION: Roy Ellis made a motion to assess the fine at \$2,000 rather than \$5,000. Motion died for lack of a second.

MOTION: Bob Chandler made a motion to assess the fine at \$3,500. Vaughn Rasmussen seconded. Eight eyes, two nays, motion carried.

The Deputy Attorney General explained the rights of Knife River, and the Division will refund \$1,500 of the penalty fee.

ACTION: The Deputy Attorney General will generate a Final Order on Appeal for the Chairman's signature and provide a signed copy to Knife River.

Mountain Valley Construction--DAM1810-0041 – Jody Butler represented Mountain Valley Construction, Compliance Program Specialist Amy Kohler represented DBS, Terry Harpt represented Intermountain Gas, and Deputy Attorney General Spencer Holm was the facilitator. With no objection from Mr. Butler, the Chairman approved the introduction of Exhibits A through L into the record. With no objection from Ms. Kohler, the Chairman approved the introduction of Exhibit 1 into the record. All parties were sworn in and provided testimony to DAM1810-0041, violation of IDAPA 07.10.01.020.01.h *Precautions to Avoid Damage*.

MOTION: Nichole Rush made a motion to uphold the appeal. Roy Ellis seconded. Nine ayes and one nay, motion carried.

The Deputy Attorney General explained the rights of Mountain Valley Construction, and the Division will refund the \$200 penalty fee.

ACTION: The Deputy Attorney General will generate a Final Order on Appeal for the Chairman’s signature and provide a signed copy to Mountain Valley Construction.

Mickelsen Construction--DAM1810-0021 – Robbie Austin represented Mickelsen Construction, Compliance Program Specialist Amy Kohler represented DBS, Terry Harpt represented Intermountain Gas, and Deputy Attorney General Spencer Holm was the facilitator. With no objection from Mr. Austin, the Chairman approved the introduction of Exhibits A through N into the record. With no objection from Ms. Kohler, the Chairman approved the introduction of Exhibits 1 through 3 into the record. All parties were sworn in and provided testimony to DAM1810-0021, violation of IDAPA 07.10.01.020.01.e *Failure to Wait for Locate or Maintain Markings*.

MOTION: Jerry Piper made a motion to uphold DBS’s ruling of the violation. Bob Chandler seconded. All in favor, motion carried.

The Deputy Attorney General explained the rights of Mickelsen Construction.

ACTION: The Deputy Attorney General will generate a Final Order on Appeal for the Chairman’s signature and provide a signed copy to Mickelsen Construction.

◆ **Revision to Statutory Proposal--RS26449**

Recently, DBS went before the Senate Commerce and Human Resources Committee for a print hearing on RS26449 (Idaho Code § 54-2211). The committee had one suggestion, change the word “may” to “shall” in the following sentence, “If the administrator ~~recommends the imposition of~~ imposes training, ~~or~~ a civil penalty, or both, the violator ~~may~~ shall complete the training, ~~or~~ pay the fine to the board upon receipt of such notice, or both.”

For consistency within the code, changes were made that a violator with a second violation could receive a civil penalty and training as well.

MOTION: Jerry Piper made a motion to approve the changes as presented. Roy Ellis seconded. All in favor, motion carried.

◆ **Revision to Statutory Proposal--RS26445**

It was reiterated language in RS26445, Idaho Code § 55-2205(3), is in the draft bill presented by Mr. Hammon.

The AIC legislative committee reviewed the proposal and authorized Linda Stricklin to explore language to clarify a city's liability as it pertains to service laterals. Article VIII Section 4 of the Idaho Constitution provides that cities/counties/other governmental entities in Idaho shall not assume the liability of another party. In most of the cities Ms. Stricklin represents, the service laterals come from the main line and is owned/operated/maintained/replaced by the property owner; therefore, they are the responsible entity. Based on the constitution, AIC is concerned about the liability to cities that do not own, maintain or operate service laterals. Ms. Stricklin proposed adding the following sentence at the end of Idaho Code § 55-2205(3): "Except underground the facility owners shall not be liable for compensation to an excavator relating to location of end users service lateral." Rather than opposing the whole concept, AIC would be supportive of cities marking laterals provided there are provisions to protect them from some liability if they do not mark as accurately as an excavator would like.

A copy of Article VIII Section 4 of the Idaho Constitution was provided to the Board.

After a lengthy discussion, Ms. Stricklin and the Board agreed to incorporate the following sentence into Idaho Code § 55-2205(3): "Nothing in this article shall be construed to impose an indemnification obligation on any public entity or to alter the liability of public entities as provided in the constitutional provision." The Deputy Attorney General offered to work with Mr. Hammon on this amendment to the statute.

MOTION: Vaughn Rasmussen made a motion to modify the Board's language in Idaho Code § 55-2205(3) to include the modification as recited by Deputy Attorney General Holm. Jerry Piper seconded. All in favor, motion carried.

Regional Manager Patrick Grace explained the process to amend the Board's proposed bill currently at the legislature. Rather than go through the amending order, Mr. Hammon recommended to go to the governor's office and ask permission to pull back the old bill and print the new bill. Another option would be for AIC to print the new bill. Chairman Diehl stated he expected DBS would look for the most effective means of moving the new proposal forward.

◆ **PHMSA Update**

There was nothing to report at this time; however, the topic will be addressed at the March meeting.

ACTION: The topic *PHMSA Update* will be placed as an informational item on the agenda for the March 14, 2019 meeting.

◆ **Education and Training Subcommittee Update**

Board Member Jeanna Anderson updated the Board on the following topics: 1) Outreach, 2) Printed educational material, 3) Advertising, and 4) DIRT report. For ease of reading, Board Member Anderson will consolidate the reports into one report; bringing a template to the March 2019 Board meeting.

As addressed at a previous meeting, Board Member Julie Maki inquired as to whether DBS had sent a letter to members of Password and Digline notifying them that they need to participate in DIRT. The Administrator offered to check into this issue. The deadline for individuals to submit their information on 2018 data to DIRT is March 31, 2019. Although the Board prefers to see quarterly reports, it is following DIRT's guidelines of a yearly report.

ACTION: The Division to verify whether a letter has been sent to members of Password and Digline regarding DIRT.

To prepare for the 2021 budget year, the Education and Training Subcommittee will bring to the March 2019 meeting a presentation on the current and projected funding, education, training and advertising recommendations, as well as associated costs. The Board must decide on what the education, training and advertising program will look like by August 31, 2019.

Board Member Mark Van Slyke stated as it gets closer to the Board's May and July meetings, the committee will bring in advertising experts to explain their programs.

◆ **Training and Industry Feedback**

This topic was addressed under *Education and Training Subcommittee Update*. A report from Energy Program Manager Jerry Peterson is in the packet.

◆ **Financial Update**

Board Member Nichole Ruch clarified, the Board has not received the first half of the PHMSA grant. At the Board's November 2018 meeting, the monies in the report were misapplied and was from the Public Utility Commission (PUC) grant. The Division has reached out to PHMSA; however, due to the federal government shutdown, has not received a reply. The remainder of the PUC grant will be made available to the Board as soon as the first half of the grant, \$22,000, is spent. The Financial Subcommittee is working on a contingency plan in the event of an economical misfortune.

◆ **Civil Penalty/Fee Schedule Adjustment**

This topic was originally addressed at the November 2018 Board meeting. Compliance Program Specialist Kohler provided a handout on the civil penalty fee structure DBS uses as a guideline.

There was confusion on the type/number of violations a homeowner can receive before the violation became monetary. Questions of concern were: 1) Is the Board going to entertain

recommendations or thoughts about aligning civil penalties to damages or aligning to gross negligence, 2) Is there any delineation based on action or is the board standing behind this, 3) Is the Board going to look at a contractor who calls in 5,000 locates a year versus a contractor that calls in 100 a year, and 4) Should the violation of the 18 months with no damages remain the same.

The Chairman stated his recollection was the statute provides parameters for civil penalties, training and monetary, as well as on repeat occurrences. In the past, the Board provided guidance to DBS, which was neither in statute or rule, to have something to go by that was in alignment with the Board's intentions. Except for the first offense, the Board did not make a distinction between homeowners, excavators or any other stakeholder.

The AGC bill was brought up once more. Unsure when the bill will be presented at the 2019 legislature, the Board agreed to hold a special meeting on February 7, 2019. The meeting will begin at 9:30 a.m. (MST)/8:30 a.m. (PST) at the Division's three offices via videoconference, as well as teleconference. The Board will discuss and vote to support or oppose the Idaho Associated General Contractors Draft Bill, as well as review the civil penalty fee structure. The Deputy Attorney General offered to provide the Board's proposed language to compare with the language brought forth by Mr. Hammon.

◆ **Compliance Report**

Reports – Compliance Program Specialist Amy Kohler addressed the following reports: 1) DBS Stats as of 1/15/2019, 2) DPB NOV Trend, and 3) DAM% NOV Activity by Date. Chairman Diehl further explained the reason behind the new DPB NOV Trend report.

DBS's Collection Process – The Compliance Program Specialist continued to explain the Division's collection process. A question arose as to whether the Division can send a complaint to the Idaho Bureau of Occupational License for investigation and possible revoking of a contractor's registration if fines are not paid. In addition, can the Division rescind a Public Works license. Chairman Diehl asked, and DAG Holm offered, to research this issue; bringing a response to the March 2019 Board meeting.

ACTION: The Deputy Attorney General will explore the issue of revoking a license from within the agency or other agency if an individual does not pay the fines assessed by the Damage Prevention Board.

ACTION: The topic *Revoking a License for Unpaid Fines* will be placed as an informational item on the agenda for the March 14, 2019 meeting.

Board Member Mark Van Slyke suggested as the Board prepares for its next PHMSA audit, a new trending report depicting historical data on the reduction of damages and information from DIRT would be an asset to the Board.

◆ **Administrator Report**

Budget – On January 18, 2019, the Division presented its Fiscal Year 2020 budget before the Joint Finance-Appropriations Committee.

Construction – Building in Idaho remains very good with no foreseeable downtrends any time soon.

◆ **Adjournment**

Chairperson Diehl adjourned the meeting at 3:15 p.m.

JEFFREY DIEHL, CHAIRMAN
DAMAGE PREVENTION BOARD

CHRIS L. JENSEN, ADMINISTRATOR
DIVISION OF BUILDING SAFETY

DATE

DATE

02/13/2019rb