

**DAMAGE PREVENTION BOARD  
VIDEOCONFERENCE MEETING**

**Thursday – March 14, 2019 – 9:30 a.m. (MDT)**

**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 MARCH 14, 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. (MDT)

**Board Members Present:**

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

**DBS Staff Members Present:**

Chris L. Jensen, Administrator  
Ron Whitney, Deputy Administrator  
Spencer Holm, Deputy Attorney General  
Larry Jeffres, Regional Manager, Region 1  
Patrick J. Grace, Regional Manager, Region 2  
Adam Bowcutt, Regional Manager, Region 3  
Jerry Peterson, Energy Program Manager  
Amy Kohler, Compliance Program Specialist  
Renee Bryant, Administrative Assistant 2

◆ **Open Forum**

There were no new issues to discuss under open forum.

◆ **Approval of the March 14, 2019 Agenda, January 24, 2019 Draft and February 7, 2019 Special Draft Meeting Minutes**

**MOTION:** Jerry Piper made a motion to approve the March 14, 2019 agenda as presented. Roy Ellis seconded. All in favor, motion carried.

On page five of the January 24, 2019 draft minutes, under the topic *Financial Update*, Board Member Nichole Rush’s last name was misspelled.

**MOTION:** Roy Ellis made a motion to approve the January 24, 2019 meeting minutes with amendment, and February 7, 2019 special meeting minutes as presented. Joe Leckie seconded. All in favor, motion carried.

◆ **Administrative Appeal Hearing**

Intermountain Gas--DAM1812-0012 – Terry Harpt represented Intermountain Gas, Compliance Program Specialist Amy Kohler represented DBS, Dan Moulton represented Fine Dirt Excavating, and Deputy Attorney General Spencer Holm was the facilitator. With no objection from Mr. Harpt, the Chairman approved the introduction of Exhibits A through M into the record.

Intermountain Gas and Fine Dirt Excavating--DAM1811-0019, Agenda Item 02b, filed complaints against each other on the same job. Hearing no objection from Mr. Harpt, and approved by the Chairman, Fine Dirt Excavating's Exhibits 1 through 14, Exhibits A through N in the packet, were entered into the record. (For clarification, recognizing both parties' exhibits were similar but different, DBS renamed Fine Dirt Excavating's exhibits numerically.) All exhibits will be used for both proceedings.

All parties were sworn in and provided testimony to DAM1812-0012, violation of IDAPA 07.10.01.020.01.d *Failure to Locate or Mark*. There were two lines, active and abandoned, where Fine Dirt Excavating was digging. Intermountain Gas located the active line; however, Mr. Moulton stated there should have been two locates since there were two lines. A lengthy discussion ensued on whether there needed to be a locate on an abandoned line. Although Intermountain Gas was aware of the abandoned line, it was not communicated to Fine Dirt Excavating. Statute defines underground facilities; however, does not mention abandoned lines.

**MOTION:** Roy Ellis made a motion to uphold the appeal by Intermountain Gas. Bob Chandler seconded. Eight ayes, two nays, motion carried.

The Deputy Attorney General explained the rights of Intermountain Gas, and the Division will refund 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 Intermountain Gas.

Fine Dirt Excavating--DAM1811-0019 – Before the proceedings began, Terry Harpt, Intermountain Gas, retracted the complaint against Fine Dirt Excavating.

**MOTION:** Jerry Piper made a motion to dismiss the complaint against Fine Dirt Excavating--DAM1811-0019 on the grounds the complaint was withdrawn; subsequently nullifying the appeal. Roy Ellis seconded. All in favor, motion carried.

The Deputy Attorney General explained the rights of Fine Dirt Excavating, and the Division will refund the penalty fee.

**ACTION:** The Deputy Attorney General will generate a written decision for the Chairman's signature and provide a signed copy to Fine Dirt Excavating.

King Concrete Construction, LLC--DAM1810-0029 – Gene King represented King Concrete Construction, LLC, Chris Smith was a witness for King Concrete Construction, LLC,

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. King, the Chairman approved the introduction of Exhibits A through K into the record. All parties were sworn in and provided testimony to DAM1810-0029, violation of IDAPA 07.10.01.020.01.e *Failure to Wait for Locate or Maintain Markings*. Mr. King did not dispute the violation; however, asked for leniency on the \$5,000 civil penalty. King Concrete Construction, LLC, has had several meetings with Intermountain Gas, and is changing internal practices to limit damages.

**MOTION:** Bob Chandler made a motion to affirm the imposed penalty with a reduction of the fine to \$1,500. Jerry Piper seconded. All in favor, motion carried.

The Deputy Attorney General explained the rights of King Concrete Construction, LLC, and the Division will refund a portion of the fine.

**ACTION:** The Deputy Attorney General will generate a Final Order on Appeal for the Chairman's signature and provide a signed copy to King Concrete Construction, LLC.

King Concrete Construction, LLC--DAM1810-0010 – All parties were still under oath from the previous appeal. With no objection from Mr. King, the Chairman approved the introduction of Exhibits A through L into the record. The violations are in accordance to IDAPA 07.10.01.020.01.f *Failure to Cease Excavation or Report Unidentified Facilities* and 07.10.01.020.01.h *Precautions to Avoid Damage*. It was determined there was only one violation, IDAPA 07.10.01.020.01.h *Precautions to Avoid Damage*. Mr. King did not dispute the violation; however, asked for leniency on the \$5,000 civil penalty. It was noted, King Concrete Construction, LLC, has had six months of good behavior and has been working with Intermountain Gas to reduce damages.

**MOTION:** Joe Leckie made a motion to affirm the violation and a civil penalty be imposed in the amount of \$1,500. Roy Ellis seconded. All in favor, motion carried.

The Deputy Attorney General explained the rights of King Concrete Construction, LLC, and the Division will refund a portion of the fine.

**ACTION:** The Deputy Attorney General will generate a Final Order on Appeal for the Chairman's signature and provide a signed copy to King Concrete Construction, LLC.

◆ **Participation in 811 One Call Service**

At a previous meeting, the Board requested the Idaho Transportation Department (ITD) address the following: 1) What is the rationale for ITD to not participate in Idaho's 811 call service, 2) Complications with "adequacy", determined by PHSMA, when a state agency is not participating, and 3) What are the problems, if any, to administer the program through ITD's district offices.

Nestor Fernandez, ITD, addressed the Board's questions; explaining the department has an internal process where an approved applicant must call 811, comply with the damage prevention laws and contact ITD to schedule to mark utilities. In addition, ITD considers it is compliant

with the process of marking underground facilities; ensuring infrastructures being added in ITD's right-of-way (ROW) is adequate and safe. As far as adequacy, ITD does not really have hazardous types of infrastructures as their lines are primarily low voltage; i.e., fiberoptic or electrical.

Board Member Jerry Piper asked if ITD would consider removing its exemption from Idaho Code 55-2210(5) since it clearly states ITD is exempt and does not have to call to go out and dig. Deputy Attorney General Spencer Holm explained the statute only speaks to replacements; therefore, if installing new guard rails, etc., ITD must still call 811.

Mr. Fernandez stated ITD is an associate member of Idaho's 811 call service, and when doing project development reaches out to 811 for contact lists of utilities in the area, emails, phone numbers, etc. Board Member Julie Maki, Digline Representative, further explained what an associate member is; stating it is totally separate from Call 811.

Chairman Diehl explained the reason it is paramount for the Board to understand why ITD is not participating in the 811 program. The state of Idaho is graded by PHMSA, a federal program, of its underground utility damage prevention measures, and currently has a failure on the report as a major state agency is not participating in the mandatory law.

#### ◆ **Education and Training Subcommittee Update**

To accommodate several board member's schedules, the Chairman moved agenda items 06 and 07, *Education and Training Subcommittee Update* and *Training and Industry Feedback*, ahead of agenda item 04 *Volume Based Consideration*.

On behalf of Board Member Jeanna Anderson, a general overview of tasks the Education and Training Subcommittee are working on was presented by Board Member Mark Van Slyke.

DIRT Report – Provided was a handout of the *Damage Information Reporting Tool (DIRT) – Field Form*. There are over 38 columns of information in DIRT. Board members were asked to identify fields they feel would be pertinent to generate statistical reports for the Board, PHMSA, etc. After further discussion, the Board agreed to leave the form as is, and when needed, provide DBS with the necessary fields to create a report.

As requested at a previous meeting, DBS will e-mail a letter to members of Digline and Password, reminding them to report all 2018 damages/incidents to DIRT by March 31, 2019.

Quarterly Report – At a subcommittee meeting, there was discussion about quarterly reporting. The data received is based on an annual report; therefore, a quarterly report may not prove effective.

#### ◆ **Training and Industry Feedback**

Introduction – Jamie Buckingham, new employee at DBS, will be Energy Program Manager Jerry Peterson's assistant, as well as will work with the Compliance Program.

Training Report – Meeting with Board Member Anderson, Ms. Buckingham created a condensed version of the Idaho Damage Prevention Training Report. In 2018, there was a total

of 38 trainings and 788 participants. As of today, there have been over 800 participants attending training.

Strategic Plan – At the request of the Education and Training Subcommittee, the Energy Program Manager distributed a proposal on a strategic plan for training in 2019.

Advertising – Provided was a document of the current budget/authorized funding available for advertising and/or training.

IG Flow Chart – The IG Flow Chart was not available at the meeting.

National Excavator Initiative (NEI) – Board Member Van Slyke introduced Lindsay Sander, Sander Resources, and Cheryl Imlach, Intermountain Gas.

Ms. Sander presented a PowerPoint presentation titled *The National Excavator Initiative*. The Board was encouraged to explore NEI's website, [safeexcavator.com](http://safeexcavator.com), which offers Micro Mike Rowe (MMR) videos/billboards, webpages specific to the major sponsors of NEI, awareness to the 811 Program, underground infrastructures, safety messages, and more. The usage of MMR material is available through October 19, 2019; however, NEI fully intends to extend its contract with Mr. Rowe. A free safe excavator app is available at Google and Apple Stores.

Based on the potential budget, NEI came up with a plan of how the monies would be distributed. The first and biggest piece would be with the Idaho Broadcast Media courtesy of Intermountain Gas. Ms. Imlach explained to begin utilizing the National State Broadcasters Association (NSBA) for the second and third quarter, the Board would need to make a commitment by Friday, March 15, 2019. If unable to meet the deadline, NSBA is willing to sell two months of the second quarter and the full third quarter; discounting the cost of the second quarter.

It is public policy of the state of Idaho that all contracts for services and property be competitively bid; therefore, a decision cannot be made until DBS meets with the Division of Purchasing. Deputy Administrator Ron Whitney and Deputy Attorney General Holm offered to contact the state's purchasing division.

**ACTION:** Deputy Administrator Whitney and Deputy Attorney General Holm will meet with the Division of Purchasing to find out the bidding requirements for advertising.

Board Member Van Slyke informed the Board the Education and Training Subcommittee plans to present a general overview at the May 2019 meeting of the education and training needs for Fiscal Year (FY) 2021.

**ACTION:** At the May 2019 meeting, the Education and Training Subcommittee will present the education and training needs for FY2021.

Chairman Diehl stated the Board will wait to hear from the Deputy Attorney General before scheduling a special meeting.

**ACTION:** A special meeting of the Damage Prevention Board will be scheduled upon hearing from Deputy Attorney General Spencer Holm about the bidding process for advertising.

**ACTION:** The topic *National Excavator Initiative (NEI)* will be placed on the May 2019 agenda as an action item.

DP-PRO Magazine – The magazine *Damage Prevention Professional* is now *DP-Pro* and is available online at [dp-pro.com](http://dp-pro.com).

◆ **Volume Based Considerations**

Provided was a handout titled *2016 National Average of 1.7 damages per 1,000 outgoing locates*. It has been brought to the Board’s attention the current “penalty box” is universal for all stakeholders and does not give consideration for the volume of operations within the industry. Board Member Chandler discovered whether the standard is two per 1,000 or three per 1,000, it is not the number of call-ins to the locate centers but the number of outgoing tickets. Several Board Members addressed concern; however, eventually agreed to the concept, to further investigate, and try to begin developing a program.

◆ **PHMSA Update**

At the November 2018 board meeting, Regional Manager Patrick J. Grace provided PHMSA’s evaluation of the state of Idaho, which was “adequate”, on the reduction of damages. For the Board to raise the numbers where David Appelbaum, PHMSA, would like to seem them, it was suggested Mr. Grace work with facility owners for the necessary data. Several board members offered to assist in gathering the information.

◆ **Financial Update**

Addressed was the Damage Prevention Board Fund, FY 2019 financial statement, through February 2019.

◆ **Seeking Revocation of a License for Unpaid Fines**

The Deputy Attorney General was asked to research whether a complaint can be filed with the Idaho Contractor Board, under the Bureau of Occupational Licenses, and/or PWCL Board, to revoke and/or not renew a contractor’s registration/license for non-payment of civil fines. There are Idaho laws where the Idaho Contractor Board can discipline a building contractor, and DBS Administrator, secretary to the PWCL Board, can discipline a public works contractor; however, they do not have the discretion to impose discipline measures based on failure to pay assessed fines.

◆ **Criteria for Reviewing Complaints**

The Division is committed to creating guidelines on what should be looked at when reviewing complaints, at least with respect to complaints where the allegation is for “Precaution to Avoid Damages”. A handout, page three of the *Damage Prevention Complaint Form*, was provided where several new boxes were added. Complainants must check the boxes; attesting to whether the questions did or did not occur, before submitting the compliant form to DBS. The questions will be part of the guidelines used by the staff as well.

As an exercise to assist in better educating DBS, Regional Manager Grace would like to bring closed cases to the Board, present the basic facts, to see what it would have told DBS to do.

For clarity, suggestions were to remove the second box “Did the offender pre-mark onsite...” as it is not a requirement in statute, and add two boxes, “yes” and “no”.

◆ **Compliance Report**

Reports – The DBS Stats Report has been revamped, and DPB NOV Trend Report will now be issued every quarter, beginning at the May 2019 meeting.

◆ **Administrator Report**

Senate Bill 1036 – Allow an alleged violator to contest both training and civil penalties, died in committee.

Senate Bill 1011 – Define terms, revises provisions regarding locating and marking underground facilities, revise provisions regarding compensation for failure to comply, and revise a provision regarding the duties of underground facility owners and excavators, has gone through the Senate Committee, and is at its third reading at the House floor.

Senate Bill 1073 – Amend existing law to define terms and provide for who shall and shall not locate and mark service laterals, originally died in committee; however, Chairman Diehl was able to get the bill revived. It has gone through the Senate Committee and has been assigned back to the House Environment, Energy and Technology Committee where DBS is in the process to find a legislator to present it.

Rule – A rule passed that adds appeal bonds, definition of “Locator”, and new civil penalty language to IDAPA 07.10.01.020.01.

◆ **Adjournment**

Chairperson Diehl adjourned the meeting at 4:18 p.m.

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JEFFREY DIEHL, CHAIRMAN  
DAMAGE PREVENTION BOARD

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CHRIS L. JENSEN, ADMINISTRATOR  
DIVISION OF BUILDING SAFETY

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DATE

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\*These DRAFT minutes are subject to possible correction and final approval by the Damage Prevention Board. 04/07/2019rb