

**DAMAGE PREVENTION BOARD
VIDEOCONFERENCE MEETING**

Thursday – March 22, 2018 – 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 22, 2018 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 Mark Van Slyke called the meeting to order at 9:34 a.m. (MDT)

Board Members Present:

Mark Van Slyke, Chairman
Vaughn Rasmussen, Vice-Chairman
Joe Leckie
Bob Chandler
Jeffrey Diehl
Roy Ellis
Nichole Rush
Scott Spears
Jeanna Anderson
Linda Phillips – Teleconference

DBS Staff Members Present:

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

◆ **Open Forum**

There were no new issues to address during open forum.

◆ **Approval of the March 22, 2018 Agenda**

MOTION: Jeffrey Diehl made a motion to approve the agenda as presented. Bob Chandler seconded. All in favor, motion carried.

◆ **Approval of the January 25, 2018 Board Meeting Minutes**

MOTION: Joe Leckie made a motion to approve the minutes as written. Roy Ellis seconded. All in favor, motion carried.

◆ **Approval of the February 12, 2018 Special Board Meeting Minutes**

MOTION: Jeffrey Diehl made a motion to approve the minutes as written. Jeanna Anderson seconded. All in favor, motion carried.

◆ **Administrative Appeal Hearing**

5J Excavation--DAM1801-0017 – JD Borges represented 5J Excavation, Compliance Program Supervisor Amy Kohler represented DBS, Terry Harpt with Intermountain Gas Company was

a witness, and Deputy Attorney General Spencer Holm was the facilitator. The Board did not object to the introduction of Exhibits A through J into the record.

All parties were sworn in and provided testimony to DAM1801-0017, violation of IDAPA 07.10.01.020.01.h *Precautions to Avoid Damage*. The Board upheld the appeal; dismissing training. The Deputy Attorney General explained to Mr. Borges his rights, and that the alleged violation will not be on his record.

MOTION: Roy Ellis made a motion to reject the recommendation. Bob Chandler seconded. Ten ayes and one nay, motion carried.

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

◆ **DPB/DBS Informational Seminars**

2018 Education and Training Plan – Jerry Peterson, Damage Prevention Education and Outreach Specialist, is creating a one-hour course for the 2018 Safety Fest in Pocatello. The subcommittee will review the course on April 5, 2018.

2018 Education and Training Meetings – In February and March, Mr. Peterson completed six field trainings with 307 signed participants. Currently, there are five trainings scheduled in April. Andeavor would like to collaborate with the Board to provide training and printed material for the AG community.

Mr. Peterson received the following feedback from his courses: 1) Small irrigation companies not a part of 811, 2) Fiber optics laid on top of marking tape in common trenches, 3) Cable TV not completely marked throughout property, and 4) Excavators reluctant to complain against customers for fear of retribution.

Training Souvenir Item – Board Member Joe Leckie suggested the Board consider building an inventory of mementos. The Education and Training subcommittee will work with Board Member Leckie on a budget for presentation at the May 2018 meeting.

ACTION: The topic *Training Souvenirs* will be placed on the May 2018 agenda as an informational item.

April--National 811 Month – It was questioned whether the Governor signed a declaration that April is National 811 month. Vice-Chairman Vaughn Rasmussen asked, and Board Member Leckie offered, to follow-up on this topic. Board Member Linda Phillips offered to follow-up with the call centers as well.

Remedial and Imposing Training – This topic was addressed at the January 2018 meeting where the Board was examining training approaches and the requirement for first time offenses; i.e., training. Board Member Jeffrey Diehl questioned whether the Board is responsible for creating those training recommendations or comfortable leaving it to DBS. The Training subcommittee will discuss and bring recommendations to the May Board meeting.

Compliance Program Specialist Amy Kohler brought forth a suggestion, based on other DBS Boards, to allow Damage Prevention Board meetings to count as the first offense training for attendees.

ACTION: The topic *Remedial and Imposed Training* will be placed on the May 2018 agenda as an informational item.

◆ **2019 Proposed Legislation**

Regional Manager Patrick J. Grace brought forth the following suggestions to refine statutes and rules.

Statutes

1. § 55-2202 – There are definitions in both statute and rule. Definitions can be in rule; however, if want more substance, definitions should be put in statute. Questioned was whether “Business Day” required further definition/revision. Digline is advising constituents they are adapting their practice of business day to better align with the state of Idaho’s definition. No changes are necessary at this time.
2. § 55-2205(2) – This section requires owners to locate and mark, with accuracy, identified but unlocatable underground facilities. In § 55-2202(9), identified but unlocatable underground facility is a facility that has been identified but cannot be located with reasonable accuracy. These sections are not consistent with each other, causing confusion with facility owners.

Board Member Diehl noted in § 55-2205(2) excavators shall not excavate until all known facilities have been marked. It is Mr. Diehl’s interpretation if an identified facility is “known” but unlocatable then there can be no excavation, including soft dig.

Deputy Attorney General Spencer Holm stated the problem could be solved by removing “... and with reasonable accuracy as defined in *section 55-2201(15), Idaho Code.*” from § 55-2205(2). This would then require locating and marking underground facilities in accordance with the best information available to the owner of the underground facilities.

Idaho Code 55-2205(4) also references those locating with reasonable accuracy; however, does not specify, “locatable underground facility” or “identified but unlocatable underground facility.” Another recommendation would be to change those references to “in accordance with subsection 2”; bringing it in line with the changes in the subsection. There was no definitive answer from the Board on this issue.

3. § 55-2208(5) – Eliminate the double reporting requirement where excavators and owners are required to report damage to facilities or downtime to the Board. The concern is if both entities report the same event, it could double the Division’s reporting figures. For the May meeting, Mr. Grace will provide a draft statute change requiring only the owner to report to the Board.
4. § 55-2211 – Currently, the complainant can only contest the imposition of civil penalties. DBS has been extending the right to contest the imposition of training on the first offense. Mr. Grace will include the imposition of training in the statute.

5. § 55-2211 – Clarify DBS has the authority to impose training and civil penalties, while the Board retains the ability to impose training/penalties on appeals. Mr. Grace will modify the statute.
6. § 55-2211 – Provide authority for the DBS Administrator to initiate complaints in the event a third party does not do so. PHMSA questioned whether the state has the ability to file a complaint on someone who violated the law. There was concern why the Division needs this provision. Upon a lengthy discussion, it was determined this issue needs to be a part of training and education. There will be no action on this issue at this time.
7. § 55-2211 – Consider authorizing DBS and/or Board to suspend a portion of any civil penalty for a probationary period. Board Member Diehl pondered the end-result, stating is it simply to demonstrate grace to the violator or in the case of a third violation be considered vindictive. This topic to be further discussed.
8. § 55-2211 – Currently, only the alleged violator has the ability to contest a matter before the Board. This would provide the complaining party the ability to appeal the Division’s final determination of a complaint before the Damage Prevention Board. Mr. Grace will modify the statute.
9. Provide direction regarding the location of, and excavation near, sewer and water (service) lateral lines within the public right-of-way and utility easements. Regional Manager Grace deferred this topic until further notice.

Rules

1. 07.10.01.008.02 & 03 – For consistency, replace the term “utility owner” with “facility owner”. Mr. Grace will provide a proposed rule change at the May 2018 Board meeting.
2. 07.10.01.018.03 – Board Member Nichole Rush explained 30 days from the date of an incident to file a complaint with DBS is not enough time to gather all the information and ensure a complaint is valid. Board Member Rush requested extending the period to either 45 or 60 days. There was no definitive answer from the Board on this issue.
3. 07.10.01.018.03 – Require payment of an appearance bond for individuals who wish to contest a civil penalty. The bond can be \$200 or the amount of the penalty imposed, whichever is less. Other Boards under DBS have imposed appearance bonds to dispute the civil penalties. Regional Manager Grace will provide a proposed rule change at the May 2018 Board meeting.
4. 07.10.01.020.01 – Include locators as stakeholders who may be eligible for civil penalties for violations of the damage prevention statutes and rules.

Regional Manager Grace stated there is a duty to report damages and downtime to the Board, as well as a report those to DIRT; however, there is no civil penalty for causing the damage. Board Member Rush explained the subcommittee determined the downtime was a result of a violation already in rule. No changes are necessary at this time.

5. 07.10.01.020.03 – Provide clarity that a single incident may result in multiple violations, and if there are multiple violations, it could be a second offense; thus, a single incident could result in civil penalties. Board Member Bob Chandler explained the subcommittee addressed this issue and no matter how many violations broken in one day, it would still constitute one offense. If on the same site the next day and violations occur, that would be a second offense. No changes are necessary at this time.
6. 07.10.01.008 – Review and possible revision of the (.10¢) per call fee for each notice an owner receives from the one-number notification service. There was no decision from the Board.

The Deputy Attorney General briefly explained the negotiated rulemaking time line for publication in the Administrative Bulletin. At the Board’s request, the rules reviewed by Regional Manager Grace to be published in the Bulletin.

Wayne Hammon, CEO of Associated General Contractors, stated his agency is going to submit legislation, mark location and depth and require all new installations be locatable, to the 2019 legislative session. As requested, Mr. Hammon will provide the draft proposals to the Board for review.

◆ **DPB Idaho Statutes and Rules**

Idaho Code §§ 55-2203(13); 55-2203(16) (e) & (f); 55-2205(1)(b) & (c); 55-2205(4); and 55-2210(5) – Board Member Jerry Piper was unable to attend the meeting; therefore, this topic will be addressed at the May 2018 Board meeting.

ACTION: The topic *DPB Idaho Statutes and Rules* will be placed on the May 2018 agenda as an informational item.

IDAPA 07.10.01.002, .005, .008.01, .008.02, .009, .016, .017.01, .018.01 – Board Member Piper was unable to attend the meeting; therefore, this topic will be addressed at the May 2018 Board meeting.

ACTION: The topic *DPB Idaho Statutes and Rules* will be placed on the May 2018 agenda as an informational item.

◆ **Sewer/Water Lines in Right-of-Way**

Using portions of definitions from other state statutes for “underground facility owner”, “public right-of-way (ROW)”, “underground facility easement”, “end user” and “service laterals”, the Deputy Attorney General brought forth a draft proposal. Included in the proposal was *Facility Operator Location Of Services Laterals* where an underground facility operator is required to locate and mark service laterals.

Board Member Scott Spears suggested the following changes: 1) Utilize the definition of ROW in Idaho Code 40-117(9) as it is quite specific in terms of establishing what is a public ROW, and 2) For less confusion, remove the language “... the right to control, operate, bury, install, maintain, or access” from the definition of *Facility Operator Location of Service Laterals*.

Board members were confused as the proposal was unclear who the responsible party is for sewer/water lines in the ROW. Deputy Attorney General Holm explained an operator is a subset of an owner and only the subset is required to locate sewer laterals and not the rest of the owners. For clarification, Board Member Spears recommended adding a reference to the end user; i.e., the end user is not required to perform locating within the public right of way.

Upon further discussion, the Deputy Attorney General will draft a proposed statute change rather than a rule change.

ACTION: The topic *Sewer/Water Lines in Right-of-Way* will be placed on the May agenda as an informational item.

◆ **PHMSA Report**

The Board's formal report should be available in April 2018, as soon as it runs through concurrent channels in Washington, D.C.

◆ **Virtual DIRT Update**

The DIRT subcommittee met in March to review training material specific to DIRT. Idaho Code § 55-2208(5), as it pertains to duel reporting, is a concern of the subcommittee as well. A recommendation was to expand the language to require only facility owners enter violations; thus, reducing potential for redundant entries and simplify the training material. In addition, the subcommittee would like to eliminate the DIRT component from contractor training.

Another facet to § 55-2208(5) is alleged violations do need entered into DIRT; however, "downtime" is the result of a failure of a violation, a cause and effect, and when considered in that context, does not need on the record.

The Chairman requested the topic *Virtual DIRT Update* be addressed at the Board's May meeting to consider how the Board can align the recommendation to accommodate various groups.

ACTION: The topic *Virtual DIRT Update* will be added to the May 2018 agenda as an informational item.

◆ **Definition of Business Day—Update**

Digline, Inc. and Pass Word, Inc. have begun to move toward aligning with state statute by working with TelDig, programming changes, as well as sending educational material to excavators.

◆ **Compliance Report**

Reviewed were two Notice of Violation (NOV) Activity by Date reports for January 1, 2017 to March 20, 2018, and February 7, 2018 to March 20, 2018. The shades of blue in the pie charts are very similar and hard to distinguish from each other. Program Specialist Kohler will request staff change the colors, as well as place the number of issues next to the explanation boxes.

The Division has a program called e-TRAKiT where the public can access information on a complaint. Program Specialist Kohler offered to provide a tutorial at the May meeting on the system.

ACTION: A tutorial of the Division's e-TRAKiT system will be provided at the May 2018 Board meeting.

Provided was a new DBS Stats report. To keep track of when to impose the \$5,000 fine, a suggestion was to add another column titled *Facility Damage Yes or No* to the report.

◆ **Administrator Report**

Financial Appropriations and Grant – Recently the Joint Finance-Appropriates Committee removed \$225,000 from the Division's budget, to include \$40,000 donated funds for advertising. However, added to the budget was a line item for \$20,000 from the Public Utilities Commission (PUC) MOU.

There is \$90,000 in grant monies. DBS is obligated to present a progress report by April 1, 2018, and anticipates requesting the full grant amount. The Division would like to apply the \$20,000 from PUC towards the training and education program and grant money toward advertising on radio and television.

Financial Report – Reviewed was the Underground Facilities Damage Prevention Fund, FY 2018 financial statement, as of February 28, 2018.

Financial Report Format – Board members expressed concern the current financial report does not provide enough detail. Rather than a single line item report, the Board prefers a highlighted summary of revenue and expenses; i.e., set-up loan, travel expenses, office expenses, Digline revenue, Pass Word revenue, loan payback, etc., broken down by month.

The Administrator agreed to a new report for the May meeting. The Board would like to review the report prior to the meeting.

ACTION: A newly formatted financial report will be provided at the May 2018 Board meeting.

Legislature – All rules have passed the legislature and become effective at sine die.

◆ **Adjournment**

The Chairman adjourned the meeting at 3:17 p.m. (MDT)

MARK VAN SLYKE, CHAIRMAN
DAMAGE PREVENTION BOARD

CHRIS L. JENSEN, ADMINISTRATOR
DIVISION OF BUILDING SAFETY

DATE

DATE

04/18/2018rb