

**DAMAGE PREVENTION BOARD
VIDEOCONFERENCE MEETING**

Thursday, March 23, 2017 – 9:30 a.m. (MT)

**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 23, 2017 MEETING

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

Chairman Mark Van Slyke called the meeting to order at 9:30 a.m. (MT).

Board Members Present:

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

DBS Staff Members Present:

Ron Whitney, Deputy Administrator
Larry Jeffres, Regional Manager, Region 1
Laurie Jilbert, Executive Assistant
Kay Christensen, Division Chief, Contracts &
Administrative Law Division, Office of the
Attorney General

♦ **Introductions**

Chairman Van Slyke introduced Kay Christensen from the Office of the Attorney General who is filling in for Deputy Attorney General Patrick Grace.

♦ **Open Forum**

No issues were brought forward during open forum.

♦ **Approval of the March 23, 2017 Agenda**

The Chairman called for the approval of the agenda.

MOTION: Board Member Piper made a motion to approve the agenda as presented. Board Member Ellis seconded. Vote called, all in favor, motion carried.

♦ **Approval of the January 26, 2017 Board Meeting Minutes**

The Chairman called for the approval of the draft minutes.

MOTION: Board Member Ellis made a motion to approve the January 26, 2017 Board Meeting Minutes as written. Board Member Chandler seconded. Vote called, all in favor, motion carried.

♦ **Acquisition of Virtual Private Dirt (VPD) Data Collection Program**

This item was reviewed at the January 26, 2017 Board meeting. The Board has decided to adopt the VPD program. There is a \$500 initiation fee and \$500 annual fee to maintain the website.

Board Members Nichole Rush and Linda Phillips discussed the use of the reporting tool. The damage information-reporting tool, found on the VPD website, shows all that is required by the Common Ground Alliance (CGA) DIRT requires as a field on the form. To be accepted when uploaded, the form needs to be filled out specifically. The Board needs to come to a decision on what fields the state of Idaho will require from this form. The law states the Board has some oversee on the definition of excavator down time. Board Member Phillips explained the form can be used individually or in an excel format for larger groups to be uploaded together. She also clarified if the fields are in red, you have to fill out the field, whether using information, unknown, or data not collected. When uploading the form, after receiving it back with corrections, the file needs to be renamed, as it will not upload under the same file name twice.

Board Member Phillips suggested discussing this issue at the next meeting so the Board can look over code. In addition, she asked for questions from the Board. Vice-Chairman Vaughn Rasmussen asked Chairman Van Slyke to consider placing this item on the next board meeting agenda so they could place the website on the screen and go through the steps Board Member Phillips was discussing. Member Phillips agreed completing the steps could be done in front of the committee at the next meeting. Board Member Jerry Piper asked if there was a possibility and if it would count as two different incidents. Board Member Phillips replied it is possible, there will be rules on how often the forms would need to be reported.

Chairman Van Slyke stated the action was the DBS would be authorized to collect fees from CGA, and asked the Board if they wanted to postpone action on this agenda item. Board

Member Rush said no, it would be necessary to vote it into action and follow up with regulations on it. Board Member Piper asked once it was implemented, would it be required for any incident to be filled out. Board Member Phillips explained once the program was implemented, the Board could discuss customizing the program.

Division Chief Kay Christensen expressed her concern with the acquisition of the tool, since all state agency purchases need to go through the Department of Purchasing. She is confident the Department of Purchasing would allow the DBS a sole source exemption. She also stated this process would be required before a vote to acquire the website is complete.

At the suggestion of the Board, Chairman Van Slyke decided to delay the action. Board Member Rush suggested a special meeting in April be held to review the operations of DIRT.

MOTION: Board Member Piper made a motion to authorize the DBS to proceed with acquiring the VPD program pending approval from the Department of Purchasing. Board Member Ellis seconded. Vote called, all in favor, motion carried.

◆ **Review of “Draft” Homeowners Violation Letter**

Board Member Phillips wanted to remove Digline from the letter, due to it is registered as an actual business name. The Board suggested a change in verbiage say, “The one number notification service could be contacted by dialing 811”.

Deputy Administrator Ron Whitney recommended an edit of the last paragraph of the first page to read, “Find educational materials that will assist you in learning more about the prevention of underground facilities” to “the prevention of damage to underground facilities”.

After discussion, the Board agreed to add the web page to the letter for ease of finding information. Verlyn Bailey, TransCanada Representative, agreed with adding a link to www.CallBeforeYouDig.com as it brings up a map of all the states and providences. The Board navigated through the multiple websites before deciding to place a link to www.Call811.com and to the DBS website in the letter.

MOTION: Board Member Ellis made a motion to utilize the homeowner’s violation letter, with edits, provided by the Board. Board Member Diehl seconded. Vote called, all in favor, motion carried.

◆ **Printing of Idaho Statute 55-22 Booklets**

Board Member Phillips stated there is interest in having a new dig statute booklet printed. The information is available online, but it would be more convenient for contractors to have a

booklet on hand to use. It was suggested to order a limited amount of them with a color cardstock cover. A quote of 1,000 color copies would be \$610 from Idaho Correctional Industries. Board Member Phillips brought up the new law that passed the legislature on March 22, 2017, stating it would only allow 100 volumes of the booklets to be processed. She also thinks it would be a good idea to make it known the statute books are current from the date they are printed; however, there is an expiration date or knowledge the statute will change during this process. Caria Nakano, DBS Program Specialist, explained the booklet would be four pages, to include information on fees and penalties.

MOTION: Board Member Ellis made a motion to print 1,000 booklets with modifications. Board Member Rush seconded. Vote called, eight ayes and one nay, motion carried.

◆ **Letter to Public Agencies Issuing Permits § 55-2209**

Pursuant to Idaho Code § 55-2209, a letter will be sent from the DBS to all public agencies that issue permits to ensure each agency is adhering to this section of the code, making sure that they are giving notice when issuing permits and that DBS has the ability to suspend the permit if not all statutes of the code are obeyed as written. The DBS has a letter drafted for review by the Board.

Board Member Jeffrey Diehl wanted clarification on an inquiry of paragraph two, which states, “The permit shall not be valid for excavation unless the notice provisions of this section have been complied with.” He also wanted to know if it meant the permit would not be issued until satisfactory evidence 811 had been utilized. The concern is a timing issue due to utility markers are valid for a specific period. Therefore, if you request a utility marking, then pursue the permit; the markings may be expired before the issuance of the permit. The response is although the permit will be issued, it is not valid without following the proper steps given by the statute.

MOTION: Board Member Diehl made a motion to authorize the DBS to send the letter to public agencies. Board Member Chandler seconded. Vote called, all in favor, motion carried.

◆ **Public Hearing – Negotiated Rulemaking**

Chairman Van Slyke went over the proposed rules, to be completed by the Board. He stated it was intended by July the questions will be formatted from the Attorney General’s Office. He asked for inquiries from the audience. Avista Representative Linda Burger suggested it be in non-technical language so the public could understand it.

Chairman Van Slyke reviewed the recommended edits from the Idaho Associated General Contractors (AGC) to the civil penalty process. Division Chief Christensen discussed her

response to their suggestions; her first concern is on page two of their letter. It creates an issue with any documents filed by people missing any information; nullifying their complaint. She believes the process needs to be gentler for homeowners. Her second concern is the plaintiff concurrently served the potential violator. She states it could come off as isolating to homeowners. Her next concern is the letter states the claimant concurrently served the alleged violator. She claims there could be potential issues locating them to be served. Her third concern is it should be clearly stated the date of damage is the day of the offense, and there is no subsequent days added until repaired. Her final concern is the letter states the alleged offender shall have 30 days to respond, then an additional 30 days, along with a deadline. She stated it was not feasible, so she suggests rewriting the statement to add 'whichever is long.'

- ◆ **Subcommittee Reports**

Chairman Van Slyke requested Vice-Chairman Rasmussen share the subcommittee report for training and education. Vice-Chairman Rasmussen turned it over to Chairman Van Slyke who went over the support documents in the packet. DBS will maintain educational information for handout and mandatory training will be held on file for two (2) years. The CGA link to best practices will be on the website. Chairman Van Slyke was open to companies sharing their training for the possibility of adoption, as well.

Board Member Piper questioned where it states it the second offense needs to remain on file for five years. Division Chief Christensen explained the differences between proofs of completion of training versus records of violation.

Chairman Van Slyke shared the updated rule, adequacy of underground facility owners locating underground facilities, as it pertains to Idaho Code § 55-2203. The Board will review all stakeholder complaints of violation of underground facility with generally accepted practice and procedures.

Division Chief Christensen questioned where generally accepted practice and procedures could be found. Chairman Van Slyke stated it would apply to specific stakeholders, i.e., Intermountain Gas, who have their own procedures. Division Chief Christensen suggested a less general wording and discussing it with DAG Grace on verbiage from a legal standpoint.

Board Member Phillips asked about third party locating companies being utilized by facility owners who have their own procedures, which may differ from the underground facility's procedures. Also, do the third parties all need to be addressed specifically or is it covered under the current suggested verbiage.

Board Member Rush suggested using CGA's standard of procedure as the Board's basic start point. Chairman Van Slyke will look into changing wording.

Board Member Piper gave the presentation on subcommittee two in Board Member Joe Leckie's absence. Board Member Piper went over the supporting documentation in the packet, which explained how penalties would be incurred. Division Chief Christensen suggested condensing and making the wording more concise. Board Member Piper agreed it could state what the penalties are for the violations, rather than a breakdown of all scenarios.

The first offense is a letter of violation and the second offense is when the penalty will occur. Chairman Van Slyke explained how a person could have multiple violations per incident.

Board Member Piper created a draft complaint form stating the complainant is filing this form with knowledge of helping lower damage to underground facilities. False reporting is subject to perjury.

Board Member Diehl spoke about the damage prevention complaint forms; going over where claims can be submitted, how to fill them out with pertinent details and the draft language for the forms. Board Member Diehl read from the rule stating the Administrator shall notify the person making the complaint of the violator recommended course of action to the Board. The Administrator shall also recommend the training course adopted by the Board. Administrator Jensen stated he would submit his letter of recommendation, following a conversation with DAG Grace.

Chairman Van Slyke went over training options, including the CGA and DBS created training. Board Member Rush stated Intermountain Gas Company is willing to offer their training to any violator. Chairman Van Slyke would like to consider how the training will be stored and what would be considered adequate training.

Verlyn Bailey from TransCanada shared they use the National Utility Contractors Association to provide excavator training, which covers multiple utilities. Chairman Van Slyke tabled this topic for further discussion.

Board Member Diehl presented Idaho Code § 55-2208, sub-part five, for underground facility owners and stakeholders who have observed or caused such damage. Mr. Diehl went over AGC's suggested language for timelines. The initial filing shall be filed within 30 days of the incident or within 30 days of discovery of the incident, whichever is later. The Administrator shall notify alleged violator, with written response from alleged violator. Member Diehl stated there could be future revisions under the response paragraph. The alleged violator has up to 30 days to contest the incident.

Board Member Rush questioned if there was a way the DBS could move forward with complaints, with the Board's approval, during the period the Board does not meet. Division Chief Christensen requested the topic be tabled for further discussion so she can meet with DAG Grace.

- ◆ **Definition of 'Hand Dig'**

Board Member Jeanna Anderson presented Idaho Code § 55-2207, definition of 'hand dig'. There is no formal definition in Idaho Statute. Board Member Anderson referenced Washington, Oregon and Montana's definitions of 'hand dig' as, "Any excavation using non-mechanism equipment that when used properly will not damage underground facilities." Ms. Anderson provided additional supporting documentation for the Board to read. After a discussion of the difference between 'area' and 'vicinity', there was an agreement to use Montana's verbiage. The draft will be presented by Board Member Anderson at the May board meeting.

ACTION: Board Member Anderson will provide a draft definition on 'hand dig' at the May 25, 2017 Board meeting.

ACTION: The topic *Definition of 'Hand Dig'* will be placed on the May 2017 Board meeting agenda as an informational item.

- ◆ **Discussion on Locates in the Right of Way**

Board Member Anderson and Board Member Scott Spears posed a question to the Board on who is responsible to locate in the Right of Way unilaterally. The Board came to the agreement it would be the responsibility of the facility owners. Chairman Van Slyke stated the question be tabled until a further look statute § 55-2207, *Excavation Contracts*.

- ◆ **Administrator Report**

In the interest of time, Deputy Administrator Whitney skipped this topic.

Financial Report – Reviewed was the financial report; specifically, grant monies to assist with expenses incurred up until now for meeting expenses, travel reimbursements, and operating costs.

There was discussion to pay back the borrowed funds from the Public Works Contractors License Board by the end of fiscal year 2017.

Acquisition of Virtual Private Dirt (VPD) Data Collection Program (Cont'd) –
Board Member Rush requested a Special meeting to discuss the acquisition of the Virtual DIRT website.

MOTION: Board Member Rush made a motion for a Special meeting on April 27, 2017, 9:30 a.m. to 12:00 p.m. (MT), to discuss the Virtual DIRT program. Vice-Chairman Rasmussen seconded. Vote taken, all in favor, motion carried.

ACTION: A Special meeting, to discuss the Virtual DIRT program, will be held on April 27, 2017, from 9:30 a.m. to 12:00 p.m. (MT).

♦ **Adjournment**

Chairman Van Slyke adjourned the meeting at 3:16 p.m. (MT)

MARK VAN SLYKE, CHAIRMAN
DAMAGE PREVENTION BOARD

CHRIS L. JENSEN, ADMINISTRATOR
DIVISION OF BUILDING SAFETY

DATE

05/17/17kh

DATE