

**DAMAGE PREVENTION BOARD
VIDEOCONFERENCE MEETING**

Thursday – May 24, 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 MAY 24, 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 9:30 a.m. (MDT)

Board Members Present:

Mark Van Slyke, Chairman
Jerry Piper
Joe Leckie
Bob Chandler
Jeffrey Diehl
Roy Ellis
Nichole Rush
Scott Spears
Jeanna Anderson
Linda Phillips

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
Adam Bowcutt, Regional Supervisor, Region 3
Amy Kohler, Compliance Program Specialist
Renee Bryant, Administrative Assistant 2

◆ **Open Forum**

Audit – The Board received a ruling of inadequacy on its 2016 audit by PHMSA.

◆ **Approval of the May 24, 2018 Agenda**

An updated agenda with the new topic *Training Report* was distributed less than 48 hours to the commencement of the May 24, 2018 Damage Prevention Board meeting. The topic was already a part of agenda item 04 *DPB/DBS Informational Seminar*; therefore, it was not necessary to add it to the agenda. Therefore, the Chairman requested the Board vote to approve the original agenda in the packet.

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

◆ **Approval of the March 22, 2018 Board Meeting Minutes**

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

◆ **Administrative Appeal Hearing**

Titanium Excavation--DAM1712-0105 – Steve Vandermeer represented Titanium Excavation, Compliance Program Specialist Amy Kohler represented DBS, Idaho Power Representative Cody Herrmann was a witness, and Deputy Attorney General Spencer Holm was the facilitator. The Board did not object to the introduction of Exhibits A through V into the record. All parties were sworn in and provided testimony to DAM1712-0105, violation of IDAPA 07.10.01.020.01.b *Notice of Excavation*.

MOTION: Mark Van Slyke made a motion to affirm DBS’s recommendation to impose training. Joe Leckie seconded. All in favor, motion carried.

The Board rejected the appeal. The Deputy Attorney General explained to Mr. Vandermeer his rights, and that the violation will be on his record.

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

On April 20, 2018, Jerry Peterson, Energy Program Manager, provided a one-hour training course to Titanium Excavation employees. Deputy Attorney General Holm clarified the civil penalties process as it pertains to the 18-month rule.

All Valley Fire Protection--DAM1802-0003 – Prior to the hearing, the appeal was resolved.

Adams Construction--DAM1712-0055 – Randy Adams represented Adams Construction, Compliance Program Specialist 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 L into the record. All parties were sworn in and provided testimony to DAM1712-0055, violation of IDAPA 07.10.01.020.01.b *Notice of Excavation*.

MOTION: Roy Ellis made a motion that if a person is willing to make the effort to come before the Board to plead his case, and has taken the required training, then the Board should be able to choose whether to waive the notice of violation (NOV) so it is not on the individual’s record.

Discussion ensued before there was a second made on the motion. Therefore, Board Member Roy Ellis had the opportunity to compose his motion once more.

MOTION: Roy Ellis made a motion to reject DBS’s recommendation for training. Motion died due to lack of a second.

MOTION: Jeffrey Diehl made a motion to affirm the Division’s recommendation for the imposition of training. Bob Chandler seconded. All in favor, motion carried.

The Board rejected the appeal. Jerry Peterson confirmed Mr. Adams fulfilled the training requirement. The Deputy Attorney General explained to Mr. Adams his rights, and the violation will be on his record.

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

◆ **DPB/DBS Informational Seminars**

2018 & 2019 Education and Training Plan – The responsibility and scope of the Education and Training Subcommittee, and the Board, is to execute the current rules, as well as provide education and training materials to the industry and citizens of the state of Idaho.

Due to retirement, effective July 1, 2018, Board Member Linda Phillips will no longer be a member of the Board.

Training Report – The training calendar, and fillable training request form, are on the DBS/DPB website. Jerry Peterson has developed a training flyer, and is working to modify an on-line course based on the one-hour presentation. The Subcommittee will view the on-line course prior to its placement on the DBS/DPB website. Since the March meeting, Mr. Peterson has provided training to approximately 135 individuals.

Excavator Handbook – The Compliance Program Specialist is working on a Safe Digging Practice Book and anticipates 1,000 copies will be available in June 2018.

Advertising and Promotional Items – Board Member Joe Leckie has ordered or will order the following items with the 811 logo for distribution at training events: Bumper stickers, pens, key chains, luggage wraps, fidget spinners, hats, and bags. Mr. Leckie will provide the supplier's information to the Board.

Jerry Peterson will manage an 811 table during registration for the June 3-6, 2018 Western Conference of Public Service Commissioners.

Grant – Deputy Administrator Ron Whitney clarified that although the grant from October 2017 runs through August 2018, the Division only has spending authority through June 30, 2018 (FY 2018).

Code Books – Upon the finalization of the draft statute and rules book, DBS will order 1,000 copies upfront. Prior to the end of June 2018, the Division will make another major purchase of 5,000 copies while it has the ability to spend the grant money.

TV Advertisement – KBOI Representatives met with the Subcommittee and brought a proposal to use Connected TV for advertising. Connected TV refers to any TV that can be connected to the internet and access content beyond what is available via the normal offering from a cable provider; i.e., Hulu, Amazon, etc. The advantage of Connected TV, which KBOI has the ability to broadcast across the state, is the audience cannot fast forward and bypass commercials. In addition, KBOI can broadcast advertisements through its station in the Treasure Valley and station in Lewiston. A recommendation was to advertise on regular TV during the broadcast of the news since people typically watch it live.

The Subcommittee approved, and the Division will sign, a contract with KBOI to use both options for eight months, June 2018 through January 2019.

Damage Prevention Board FY2018 and FY2019 Worksheets – (Disclosure, the worksheets provided are not part of the accounting system; however, are to assist the Board with advance planning and forecasting of its finances.) Deputy Administrator Whitney reviewed Administration and Training/Education revenue/expenses for FY 2018, as well as projected revenue/expenses for FY 2019.

Board Member Ellis stated a portion of the city of Idaho Falls’ license fees go to education and continuing education. If Mr. Peterson works with the city of Idaho Falls on training, the city should reimburse a portion of the expenses.

Board Member Jeffrey Diehl suggested it might be appropriate to contemplate the creation of a financial subcommittee to guide and provide financial recommendations on behalf of the Board. The Chairman agreed, and requested the topic *Financial Subcommittee* be an action item on the July Board meeting agenda.

ACTION: The topic *Financial Subcommittee* to be added to the agenda for the July Board meeting as an action item.

The Education and Training Subcommittee will review whether to spend more money and/or if it needs the Board’s authority. Submit suggestions to Deputy Administrator Whitney, Subcommittee Chairman Rasmussen, and/or Board Chairman Van Slyke. For clarification, discussed was the time line on the approval process and spending authority of the Division’s budget.

◆ **Compliance Report**

Damage Prevention Case Report – For better viewing, provided was a graph rather than a pie chart on violation counts/types in the report, which Compliance Program Specialist Kohler reviewed for the period of March 21, 2018 to May 14, 2018. The Compliance Program Specialist explained the process for assessing fines, and offered to provide the Board with a list of the code descriptions and fees for each violation.

ACTION: Prior to the July meeting, the Compliance Program Specialist to provide the Board a breakdown of the assessment of violation fees.

◆ **2019 Proposed Legislation**

Regional Manager Patrick J. Grace brought forth the following proposals to refine statutes and rules. As part of the negotiated rulemaking process, they will need to be placed as action items on the agenda for the July Board meeting.

ACTION: The topic *2019 Proposed Legislation* to be added to the agenda for the July Board meeting as an action item.

- Complainant Right to Contest--§ 55-2211 – The Division determined, and the Association of General Contractors agreed, there is no merit in adding “complainant” to

the statute to contest the imposition of a civil penalty. Therefore, the topic *Complainant Right to Contest--§ 55-2211* will not move forward.

- Definitions--§ 55-2202 – There are definitions in both statute and rule; however, the majority are in statute. For consistency, definitions should be in statute only. Therefore, the definitions for “Soft digging” and “Hand digging” need removed from rule and added to statute.

A lengthy discussion ensued on whether to add locators to those stakeholders who can receive civil penalties for failure to locate or mark an underground facility. Board Member Nichole Rush brought up this subject to better understand the Board’s position.

- Division Imposition--§ 55-2211 – Rather than the Division recommend training or civil penalties to the Board for approval; DBS would have the authority to impose training or civil penalties. The alleged violator would then have the right to appeal to the Board.
- Double Reporting--§ 55-2208(5) – Eliminate double reporting of the same incident by only requiring facility owners to report damages to facilities or downtime to the Board.
- Identified but Unlocatable Underground Facility--§ 55-2205 – In subsection two (2), move the language “and with reasonable accuracy as defined in section 55-2202(15), Idaho Code” from the second sentence to the first sentence. This will clarify the owner or owner’s agent of identified but unlocatable underground facilities shall locate and mark in accordance with the best information available, and the owner or owner’s agent of locatable underground facilities shall locate and mark with reasonable accuracy.

Board Member Diehl further stated the meaning “Utilityunderground facility owner”, subcategory ~~2149~~ of the draft proposal, is well defined and should resolve this matter as it is well defined.

- Right to Appeal Training--§ 55-2211 – The alleged violator to have the ability to appeal training, as well as civil penalties.
- Service Laterals--§ 55-2202 – New definitions were added to clarify terms used when addressing service laterals. Due to confusion among the Board, the Deputy Attorney General stated all owners are operators; however, not all operators are owners. After a lengthy discussion, it was suggested an operator, distinguished from the owner, is responsible, and leave the verbiage “owner/operator” in the statute.

Board Member Diehl explained this issue developed because the Board was trying to reconcile who the responsible party is for locating wet utility service laterals. Mr. Diehl further stated the meaning “Utility facility owner”, subcategory 19 of the draft proposal, is well defined, and it should resolve this matter.

The Deputy Attorney General and Board Member Diehl agreed to will meet and further amend the proposed statute change for the Board's review at its next meeting.

Regional Manager Grace received an e-mail from Board Member Jerry Piper with questions about possible statute and rule changes. One question of interest is the replacement of highway guardrails, post signs, etc., and whether highway districts or Idaho Transportation Department need to call for locates. Based on Idaho Code 54-2210 (5) *Excavations Exempt from Notice Requirement*, they are exempt from the notice of excavation only.

◆ **Negotiated Rulemaking**

- 07.10.01.008.02 & .03--Replace "Utility Owner" with "Facility Owner" – The rule is very limited when using "utility" as the type of owner in *Payment Submission* and *Notices Issued*. Therefore, to broaden the rule, the word "facility" will replace "utility".
- 07.10.01.018.03--Extend 30-Day Complaint Requirement – Extending the complaint requirement to 60 days means it could take second, third and/or fourth offenses a year to obtain a ruling. It was determined no further action needed at this time.
- 07.10.01.003--Require Payment of an Appeal Bond – Other Boards within DBS impose appeal bonds. This proposal would require the amount of the penalty or \$200.00, whichever is less. If appeal denied, the bond goes toward the penalty fee, and if appeal approved, the money refunded to the alleged violator.
- 07.10.01.020.01--Make Locators Eligible for Civil Penalties – Added was the definition of "locator", as well as "owner's agent", and "when responsible to do so" to subsection d *Failure to Locate or Mark*.
- 07.10.01.007 & .021--Sewer/Water Lines in Right-of-Way – This is actually duplicative of the statutory proposal as earlier addressed in the topic *Service Laterals--§ 55-2202*.
- 07.10.01.020.03--Clarify Multiple Violations in One Day – At the March 2018 meeting, the Board decided not to move forward with this topic.
- 07.10.01.008--Ten Cent (.10¢) Per Call Fee – At the March 2018 meeting, the Board decided not to move forward with this topic.

Regional Manager Grace received an electronic comment from Scot Hattenburg, President of M & L Construction, Inc., to increase the ticket duration from three to four weeks. As of today, DBS has not officially received any rule changes as required in the negotiated rulemaking process.

◆ **Virtual DIRT Update**

The DIRT Subcommittee has not met since the March Board meeting. Deputy Administrator Whitney asked Board Members Phillips and Rush to assist the Compliance Program

Specialist and himself with understanding what goes into DIRT and the reports DBS needs to generate for the Board's review.

Board Member Rush stated the Board has identified DIRT as the reporting tool to use statewide; however, has not included a procedure for processing claims related to damages of underground facilities. Upon further discussion, it was determined that although statute refers to rule, IDAPA 07.10.01.019.02 *Reports*, does not require instructions in rule.

For the July meeting, the Subcommittee will bring a recommendation to the Board as an action item to decide the form of education required for individuals reporting to DIRT.

ACTION: The topic *Virtual Dirt Update* to be added to the agenda for the July Board meeting as an action item.

◆ **Compliance Report (Cont'd)**

Schedule of Fines – As addressed earlier, the Compliance Program Specialist provided a general guideline of the fines DBS use for its trades that issue civil penalties.

e-TRAKiT System Presentation – Another company has bought the rights to e-TRAKiT. The Division has tried several times to contact the new company but has never received a call back. The Compliance Program Specialist offered to demonstrate the system; however, there are no new changes at this time.

◆ **Administrator Report**

Statistics – The Administrator provided an overview of the Division's activities in 2017.

Digline – Julie Maki, Digline Manager, has sent e-mails to all interested parties; notifying them about the change with regard to the term "business day", which becomes effective August 1, 2018. Since the first of April, four out of five days Digline has received over 700 inbound locator requests and is averaging 5.4 outbound tickets; an increase of 18% over 2017.

◆ **Adjournment**

The Chairman adjourned the meeting at 2:55 p.m. (MDT)

MARK VAN SLYKE, CHAIRMAN
DAMAGE PREVENTION BOARD

CHRIS L. JENSEN, ADMINISTRATOR
DIVISION OF BUILDING SAFETY

DATE

DATE

07/20/2018rb