

**DAMAGE PREVENTION BOARD
VIDEOCONFERENCE MEETING**

Thursday – July 13, 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 JULY 13, 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 9:32 a.m. (MT)

Board Members Present:

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

DBS Staff Members Present:

Chris L. Jensen, Administrator
Ron Whitney, Deputy Administrator
Patrick Grace, Office of the Attorney General
Spencer Holm, Office of the Attorney General
Tanisha Townsend, Program Manager
Kayla Harris, Administrative Assistant 1

♦ **Open Forum**

No issues were brought forward during the open forum.

♦ **Approval of the July 13, 2017 Agenda**

The Chairman called for the approval of the agenda.

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

♦ **Approval of the May 25, 2017 Board Meeting Minutes**

The Chairman called for the approval of the draft minutes.

MOTION: Board Member Chandler made a motion to approve the May 25, 2017 Board Meeting Minutes as written. Board Member Diehl seconded. Vote called, all in favor, motion carried.

- ◆ **Public Hearing – Negotiated Rule Making**

Negotiated Rulemaking – Chairman Van Slyke opened up the following proposed changes to the public for comments.

Civil Penalties – Wayne Hammon, Idaho Associated General Contractors Representative, inquired about the term “reasonable care” in IDAPA 07.10.01.009.01(h) “Precautions to Avoid Damage”. Mr. Hammon also suggested deleting the first sentence in IDAPA 07.10.01.009.03 “Multiple Violations”.

Chairman Van Slyke responded by saying the purpose of the verbiage “may” within the rule allows for flexibility. Mr. Hammon stated it may not hold up in court as written and the awareness of the laws existence should take a step in fixing issues.puty Attorney (DAG) Patrick Grace elucidated without the sentence, the paragraph allows for multiple violations. Mr. Hammon agreed it gave reasonable room to contest. Chairman Van Slyke inquired about what it would take for contractors to be unable to work in the state. Board Member Roy Ellis answered it would require a complaint, investigation and possible retraction of registration. Julie Maki, Manager for Digline, requested the information be provided to the call centers.

Board Member Scott Spears read from IDAPA 07.10.01.009.02 the definition of second offense. Board Member Jeffrey Diehl clarified in IDAPA 07.10.01.009.02, to strike “within five (5) years but not which occurs within eighteen (18) months of a previous violation of any provision”. The board agreed with the suggestion to strike “within five (5) years from” in IDAPA 07.10.01.009.02.

MOTION: Board Member Spears made a motion to strike “within 5 years (but not ...)” from IDAPA 07.10.01.009.002 *Second Offense*. Board Member Diehl seconded. Vote called, all in favor, motion carried.

Education and Training Materials – Board Member Linda Phillips inquired about training for emergency procedure notification to one-call centers. Board Member Phillips asked, and the Chairman stated, the training materials would be available on the board’s website. With regard to IDAPA 07.10.01.009.01(a) *Pre-marking Excavation Site*, Board Member Phillips provided clarification on pre-marking for one-call tickets.

Complaint Process – Board Member Phillips inquired, and Board Member Diehl explained, it does not require an alleged violator to provide verifiable proof to the administrator within thirty (30) days.

MOTION: Board Member Leckie made a motion to strike the first sentence from IDAPA 07.10.01.009.03 *Multiple Violations*. Board Member Ellis seconded. Vote called, all in favor, motion carried.

- ◆ **PHMSA- Idaho Damage Prevention Audit of Adequacy**

David Appelbaum, State Evaluator for Pipeline and Hazardous Materials Safety Administration (PHMSA), introduced the program to the board. Following the Pipes Act of 2006, Congress determined there were nine elements for safe damage prevention. PHMSA conducted a national survey of each state to evaluate enforcement programs within those states. Part 198, Excavation Enforcement Rule, 49 USC § 60114, gives the federal

government backstop authority against excavators in states that are considered inadequate. Currently, Idaho is considered inadequate, which allows PHMSA to take sanctions against Idaho excavators. Mr. Appelbaum offered the board a case PHMSA currently has pending against a landowner in Lava Hot Springs. He attended the meeting with the intent of evaluating the Damage Prevention Board for compliance with the PHMSA regulations; however, after listening to the board's discussions, he decided to postpone the evaluation for the next board meeting in November.

MOTION: Board Member Diehl made a motion to hear the Lava Hot Springs pipe damage case. Board Member Ellis seconded. Vote called, all in favor, motion carried.

MOTION: Board Member Van Slyke made a motion to move the audit to the next board meeting in November. Board Member Leckie seconded. Vote called, all in favor, motion carried.

◆ **Damage Prevention Board Ad Campaign**

Tom Scott, Tom Scott Agency, reviewed the updated ad campaign budget. A handout of each area the money has been allocated was provided. Mr. Scott stated the data-gathering portion went well, and explained how the Tom Scott Agency has altered the projection for the best reception. The digital campaign is being modified for the northern region since there are different television service providers stationed out of Washington. Mr. Scott went over the television Public Service Announcement air times; totaling 910 spots throughout Idaho. A Facebook page has been created. The board will appoint an administrator for the Facebook page. Tom Scott stated the PSA ends August 11th; however, there is enough in the budget to continue past that day. Program Manager Tanisha Townsend will look into the grant payment details. Chairman Van Slyke would like to get an advertisement consortium for all the companies who currently advertise and will bring more information to the September meeting.

◆ **DIRT Contract**

DAG Grace reached out to the Common Ground Alliance (CGA) for clarification on the contract purchase. The CGA requested how the State of Idaho would use the Virtual Private Dirt (VPD) program. DAG Grace inquired if the board is comfortable using VPD without further clarity. Board Member Phillips explained the data gathered from VPD is accessible with administrator permission attained by the board. The board agreed Board Member Rush would be the administrator for the VPD.

◆ **DBS/DPB Damage Complaints**

Board Member Rush inquired about how damage complaints would be heard as it pertains to the open meeting laws. DAG Grace clarified it is public information; however, it would not be a public hearing where civilians can comment on cases. Board Member Ellis shared information on the use of Executive Session. DAG Grace stated an Executive Session would not apply for those instances, although there is specific information that can be redacted.

◆ **DPB Website**

Chairman Van Slyke explained the Damage Prevention Board's website is active. Board members can request changes at any time.

♦ **Administrator Report**

Financial/Grant Reports – Administrator Chris L. Jensen presented the Board’s budget and deadlines for grant funds. Also provided was an itemized list of current expenditures through June 31, 2017.

♦ **Adjournment**

Chairman Van Slyke asked for a motion to adjourn the meeting.

MOTION: Board Member Diehl made a motion to adjourn. Board Member Chandler seconded.

The meeting adjourned at 2:39 p.m. (MT)

MARK VAN SLYKE, CHAIRMAN
DAMAGE PREVENTION BOARD

RON WHITNEY, DEPUTY ADMINISTRATOR
DIVISION OF BUILDING SAFETY

DATE

09/20/17kh

DATE