

**DAMAGE PREVENTION BOARD
VIDEOCONFERENCE MEETING**

Thursday – September 28, 2017 – 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 SEPTEMBER 28, 2017 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 9:32 a.m. (MDT)

Board Members Present:

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

DBS Staff Members Present:

Ron Whitney, Deputy Administrator
Spencer Holm, Deputy Attorney General
Larry Jeffres, Regional Manager, Region 1
Patrick Grace, Regional Manager, Region 2
Jeff Egan, Regional Manager, Region 3
Fred Sisneros, Financial Manager
Amy Kohler, Compliance Program Specialist
Renee Bryant, Administrative Assistant 2

◆ **Approval of the September 28, 2017 Agenda**

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

◆ **Approval of the July 13, 2017 Board Meeting Minutes**

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

◆ **Change to the Agenda**

Due to scheduling changes, there was a request to move agenda item ten *Administrator Report* to the first item under the informational agenda.

AMENDED MOTION: Jerry Piper amended his motion to approve the agenda with the change. Bob Chandler seconded. All in favor, motion carried.

◆ **Election of Officers**

In statute, the chairman and vice-chairman may not hold a position for more than two consecutive terms. Chairman Mark Van Slyke and Vice-Chairman Vaughn Rasmussen have served one year; therefore, are eligible to hold office for one more term.

MOTION: Jerry Piper made a motion to re-elect the current officers. Jeffrey Diehl seconded. All in favor, motion carried.

◆ **Schedule 2018 Board Meetings**

The 2018 Damage Prevention Board meeting dates are January 25, March 22, May 24, July 26, September 27, and November 29. Meetings will continue to be every other month to accommodate rulemaking procedures and possible complaints.

MOTION: Vaughn Rasmussen made a motion to accept the above-mentioned 2018 board meeting dates. Nichole Rush seconded. All in favor, motion carried.

ACTION: The 2018 Damage Prevention Board meeting dates will be added to the Board Meeting calendar on the Division's website.

◆ **Education and Training**

Intermountain Gas Training Program – A PowerPoint presentation by Terry Harpt, Intermountain Gas Public Awareness Coordinator, did not properly download to the Division's computer. The Administrative Assistant offered to distribute Mr. Harpt's PowerPoint to the Board after the meeting.

A letter by Intermountain Gas explaining the new complaint process when damages occur to one of its underground facilities was distributed. Mr. Harpt asked the Board to approve the letter as a form of safety awareness. The majority of the Board interpreted Intermountain Gas's letter as addressing two components; educational and notice of complaint. It was suggested two letters be generated with the notice of complaint sent certified mail.

Idaho Power has a similar letter; however, it addresses locates not called in and is sent certified mail.

The Division will not design training; however, is looking for resources through groups associated with the industry.

Upon further discussion, Mr. Harpt offered, and the Chairman agreed, to present his PowerPoint presentation to the Board later in the meeting. The Chairman suggested the topic *Intermountain Gas Training Program* be placed after agenda item nine *DPB Members – All*.

MOTION: Jeffrey Diehl made a motion to move the topic *Intermountain Gas Training Program* immediately behind agenda item nine *DPB Members - All*. Bob Chandler seconded. All in favor, motion carried.

◆ **Administrator Report**

Financial Report – Deputy Administrator Ron Whitney reviewed two handouts, Damage Prevention Board Call Revenue Spreadsheet and Underground Facilities Damage Prevention Board's Fiscal Year (FY) 2017 Financial Statement as of June 30, 2017. Also reviewed was the

Underground Facilities Damage Prevention Board's FY 2017 Financial Statement as of August 31, 2017, included in the packet.

Grants – Recently notified, the Division will receive \$90,000 from a second grant submitted to the Pipeline & Hazardous Materials Safety Administration (PHMSA) in February 2017. Of the monies, allocated is \$30,000 and \$60,000 is marked as “other”, which is not well defined. In the grant is an element that can apply towards enforcement. In addition, the grant specifically has a section that is adherence to original project objectives and budget estimates allowing the Division to make an addendum to the original request.

811 – April is National Safe Digging Month. Prior to April 2018, Board Member Linda Phillips suggested grant monies be used to order and distribute updated 811 brochures to all permitting agencies.

The Deputy Administrator offered to resend a letter, originally sent to all permitting agencies on permit compliance and 811 flyer to cities and counties.

Virtual Private DIRT – DBS has registered with Virtual Private Damage Information Reporting Tool (DIRT). There is a \$500 set-up fee and \$500 annual membership fee. Deputy Administrator Whitney and Board Member Phillips will verify the transfer of all clients and historical information from Pass Word and DIGLINE to the Division's state specific reporting system. It is the goal of the Division to provide a report of activities at every board meeting, whether from Virtual Private DIRT or complaints filed with DBS.

Complaint Process – Regional Manager Larry Jeffres recently attended a public hearing with the Washington Utilities and Transportation Commission. A five-person committee make recommendations to the Board for action. Individuals from the Washington commission have offered to discuss Washington's procedures with the Board.

For future reference and the Board's benefit, Board Member Jeffrey Diehl requested, and the Deputy Administrator agreed, for Mr. Jeffres to summarize the time allocations that occurred and procedural path that transpired.

Regional Manager Patrick Grace has been in contact with Oregon and its complaint process is similar to Washington. Pipeline Safety Chief Kevin Hennessey, Oregon Public Utility Commission, offered to attend a Damage Prevention Board meeting to discuss Oregon's procedures.

ACTION: The Division will invite at least one of the two states to attend the November meeting to discuss complaint processes and procedures.

PHMSA Audit – At the July meeting, David Appelbaum, State Evaluator for PHMSA, offered the Board a case against a landowner in southeastern Idaho. During the process, Regional Manager Grace reached out to Mr. Appelbaum, who shared useful information about the upcoming 2016 audit; specifically, creating the appropriate expectations. He suggested engaging in the temporary rules and issuing civil penalties to generate records and processes for the 2017 audit.

Budget – On September 1, 2017, the Division submitted its budget request for FY 2019. In the request is four full-time employees, three investigators and one technical records specialist. If approved, the monies would have to come from general funds.

Grants (Cont'd) – The Division has identified another \$60,000 grant, available through the Public Utilities Commission, with a deadline for submission of October 12, 2017. The grant is on a three-year term with monies issued one year at a time.

Additional Data Report – Board Member Nichole Rush met with Deputy Administrator Whitney and Financial Manager Fred Sisneros to discuss expenditures. In the future, Board Member Rush would like additional information on the larger amounts of revenue and expenditures.

Loan – It is projected the \$25,000 loan from the Public Works Contractors License Board, to assist the Damage Prevention Board with start-up costs, will be repaid by the end of June 2018.

Complaint Process Subcommittee – The Deputy Administrator suggested the Board create a subcommittee as a reference or “go-to” for the Division as it begins to address processing of complaints, as well as to set-up matrix for the type of information DBS is trying to control from the complaints and reports it gives to the Board. It was decided to further discuss the topic of a new subcommittee under agenda item seven *Damage Complaints Review*.

◆ **Rules Update**

The Governor’s office approved the Board’s temporary and proposed rules. The temporary rules became effective September 1, 2017, and the 2018 legislature will review the proposed rules for permanent status.

Upon speaking with stakeholders, Board Member Bob Chandler asked the Division to publish the rules as an addendum to the statutes, flyer, etc. The rules are on the DBS and Board’s websites; however, the Deputy Administrator will get a publication quote for the November Board meeting.

ACTION: The Division will provide a quote on the publication of rules at the November 2017 Board meeting.

◆ **Damage Complaint Review**

Status of Current Complaints – The Division has received seven complaints. One did not qualify as the violation was prior to September 1, 2017. The other six are incomplete and require additional information.

Board Member Rush stated it is a stretch to meet the 30-day timeframe for the submittal of complaints to DBS. So far, it seems the common denominator is the failure to hand dig. Board Member Jeanna Anderson will create a list of soft dig options.

As addressed under the topic *Complaint Process Subcommittee*, the Chairman asked if this was a good time to create a subcommittee.

MOTION: Vaughn Rasmussen made a motion to amend the agenda, adding an action item to create a complaint process subcommittee. Jeffrey Diehl seconded. All in favor, motion carried.

MOTION: Jeffrey Diehl made a motion to form a subcommittee as a resource for DBS on the complaint process. Jerry Piper seconded. All in favor, motion carried.

The following board members offered to be on the subcommittee: Nichole Rush, Jeanna Anderson, Jerry Piper, Jeffrey Diehl and Roy Ellis. Although not at the meeting, Board Member Ellis spoke to the Administrative Assistant to the meeting and stated interest to be on a future committee.

MOTION: Vaughn Rasmussen made a motion to accept the five volunteers as the subcommittee. Bob Chandler seconded. All in favor, motion carried.

Stakeholder Contact Information – For clarification, it is up to the individual filing the complaint to find out whom the contact of the facility owner is and how to get their information.

Non-Compliance of DBS Mandated Training or Penalties – This topic has been addressed at previous meetings. There have been discussions on the type of recourse to an individual/company that does not accept training or stop damaging facilities; however, there has been no decision. Therefore, it was determined to table this topic until further notice.

Vice-Chairman Rasmussen chaired the remainder of the meeting upon Chairman Van Slyke's departure at 11:45 a.m.

◆ **Damage Prevention Board Ad Campaign**

Idaho Code 54-2203(18) states, "The Board may receive contributions, gifts and grants on behalf of and in aid of the program. Such contributions, gifts and grants shall be deposited in the damage prevention board fund established pursuant to section 55-2204, Idaho Code."

The Division must go through the Division of Financial Management (DFM) to receive spending authority to utilize monetary gifts. Financial Manager Sisneros offered to meet with DFM to confirm the procedure. Vice-Chairman Rasmussen asked, and the Financial Manager agreed, to report his findings to the November 2017 Board meeting.

ACTION: For the November 2017 meeting, the Financial Manager will provide a report on the process the Division must use to receive spending authority on donated monies.

ACTION: The topic *Damage Prevention Board Ad Campaign* will be placed on the November 2017 agenda as an informational item.

◆ **Education and Training (Continued)**

Terry Harpt, Intermountain Gas, provided a video on how 811 works, as well as a PowerPoint presentation on Idaho dig line law, Damage Prevention Board, potential violations, gas line incidences, etc. If approved, the program would be another source of training/education available to all interested parties at no charge.

The Board encourages multiple facility owners to submit their training programs for consideration and adoption into the training toolbox.

MOTION: Jeffrey Diehl made a motion to accept the training course by Intermountain Gas. Jerry Piper seconded. All in favor, motion carried.

◆ **DPB Members – All**

Presentations and Reimbursements – The question arose if a board member attends a meeting/presentation as a representative of the Board, would the Board reimburse them for expenses.

Several board members voiced concern that depending on the event, it could be perceived as a conflict of interest. There are ethic laws that prevent conflict of interest. Deputy Attorney General Spencer Holm offered to research the laws.

ACTION: The Deputy Attorney General will look into the ethic laws on whether it is a conflict of interest for a board member to represent the Board at a function and receive reimbursement for travel expenses.

The Board agreed that if a board member represents the Board at a function outside of a board meeting, pre-approval by the Board would be required.

ACTION: The topic *Presentations and Reimbursements* will be placed on the November 2017 agenda as an informational item.

Sewer and Water Lines in the Right of Way (ROW) – Utilities, contractors and others are hitting/damaging lateral lines in the ROW and expected to pay to fix the damages. Board Member Rush has heard sewer and water companies are not locating in the ROW; stating it is not at the main and the onus is on the homeowner. Based on statute, it is the underground facility owner or the owner's agent to locate and mark its locatable underground facilities by surface marking the location of the facilities.

Suggestions were to invite the Association of Idaho Cities (AIC) and Association of Counties to a Board meeting, as well as the Deputy Attorney General to research for any legal opinions.

ACTION: Deputy Attorney General Holm will look into whether there are any legal opinions on this topic.

Board Member Scott Spears asked, and Regional Manager Grace offered, to contact Nancy Stricklin, attorney and AIC representative, for her opinion. Board members can reach out to cities and associations as well.

Regional Manager Grace also offered for Regional Manager Jeffres and himself to contact Washington and Oregon on how they handle this issue.

ACTION: Regional Managers Jeffres and Grace will contact the states of Washington and Oregon, as well as Regional Manager Grace will reach out to Nancy Stricklin for opinions or processes on this topic.

ACTION: The topic *Sewer and Water Lines in the Right of Way (ROW)* will be placed on the November 2017 agenda as an informational item.

Positive Response – Positive Response is a system that closes the communication loop between the excavator and utility operator by informing the excavator when and if the lines are marked.

Idaho is one of a few states that does not have a Positive Response system when it comes to locates.

To drive down damages, there are two constraints in statute, 1) The owner or owner’s agent of the underground facility will respond (locate) no later than two (2) business days, and 2) Excavators shall not excavate until all known facilities have been marked.

Abandoned Lines – Board Member Bob Chandler stated industry is concerned about abandoned lines not being located and the down time to find out. Board Member Chandler foresees contractors filing complaints due to down time and locates not done within the 48-hour timeline.

There is a contractual obligation between the locator and facility owner on what is the responsibility to mark. The statute does not say you do not have to mark abandoned lines, it says you have to mark owned lines and facility owners still own those abandoned lines.

◆ **Adjournment**

MOTION: Jeffrey Diehl made a motion to adjourn the meeting. Jerry Piper seconded. All in favor, motion carried.

The meeting adjourned at 1:55 p.m. (MDT)

VAUGHN RASMUSSEN
VICE-CHAIRMAN
DAMAGE PREVENTION BOARD

RON WHITNEY
DEPUTY ADMINISTRATOR
DIVISION OF BUILDING SAFETY

DATE
11/02/17rb

DATE