

IDAHO DAMAGE PREVENTION BOARD
VIDEOCONFERENCE MEETING

Thursday, November 10, 2016 – 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 NOVEMBER 10, 2016 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 - Absent
Bob Chandler
Jeffrey Diehl
Roy Ellis - Absent
Joe Leckie
Linda Phillips
Nichole Rush
Scott Spears
Jerry Piper

DBS Staff Members Present:

C. Kelly Pearce, Administrator
Steve Keys, Deputy Administrator
Patrick Grace, Deputy Attorney General
Fred Sisneros, Financial Manager
Chris Jensen, Regional Manager, Region 3
Larry Jeffres, Regional Manager, Region 1
Laurie Jilbert, Executive Assistant

♦ **Call to Order**

Chairman Van Slyke called the meeting to order at 9:30 a.m. (MT). Roll call taken, Jeanna Anderson and Roy Ellis absent. Quorum established.

♦ **Open Forum**

The Chairman noted there were no guests in the audience; however, he took the opportunity to discuss the use of Roberts Rules of Order to conduct the Damage Prevention Board (Board) meetings. The Chairman is agreeable to relax the formal process, but supports the need to maintain order at the meeting.

- ◆ **Approval of the November 10, 2016 Agenda**

The Chairman called for the approval of the agenda; Jerry Piper made a motion to approve, Chairman Van Slyke requested a couple of changes to the agenda; Joe Leckie asked for the PHMSA presentation to be moved to the next meeting, and agenda item 5, formation of three (3) subcommittees, clarification on the number of subcommittees.

MOTION: Jerry Piper made the motion to approve the agenda with the removal of item 6 (PHMSA), motion seconded by Joe Leckie. Vote called, all in favor, motion carried.

- ◆ **Approval of the September 8, 2016 Board Meeting Minutes and September 22, 2016 “Special” Board Meeting Minutes.**

MOTION: Jerry Piper made the motion to approve the September 8, 2016 Board Meeting Minutes and September 22, 2016 “Special” Board Meeting Minutes as presented. Bob Chandler seconded. Vote called, all in favor, motion carried.

- ◆ **Public Hearing**

Patrick Grace, Deputy Attorney General (DAG), discussed the Board’s action at the September Board meeting to establish a fee rate and collection on notices to one-number notification services in the form of a temporary/proposed rule. The notice of rulemaking was published in the Administrative Bulletin which came out on November 2nd. This notice affords the public the opportunity to comment on the temporary/proposed rule. The hearing was scheduled for today to allow any interested parties to come before the Board to express any concerns or contributions to the rule. The Division of Building Safety (DBS) has not received any comments on this rulemaking. Patrick Grace believes the Damage Prevention Board rulemaking is ready to proceed to the legislature. Discussion was held on negotiated rulemaking, the DAG clarified the agency’s practice with the negotiated rulemaking process to include interested parties’ participation with the formulation of the rule, and participation with comments on the rule after it’s been published in the Administrative Bulletin.

- ◆ **Schedule 2017 Board Meetings**

Chairman Van Slyke recommended the Board meet every other month to address the business required of the Board. Vaughn Rasmussen recommended the Board pick a day of the month to meet, i.e. Wednesday, Tuesday, etc. The Board agreed Thursdays would be a good day of the week for most. Discussion continued, the fourth Thursday of the month was recommended as the meeting dates for the Damage Prevention Board. Review of the DBS Boards calendar for open dates on the fourth Thursday. Discussion was held on the dates to be selected for 2017.

MOTION: Jerry Piper made a motion for the Damage Prevention Board to meet in 2017 on January 26th, March 23rd, May 25th, July 13th, and September 28th. Scott Spears seconded the motion. Vote called, all in favor, motion carried.

ACTION: The 2017 Damage Prevention Board meeting dates will be published on the calendar on the DBS website.

◆ **Formation of Committees**

Chairman Van Slyke addressed the Board on the formation of subcommittees to fulfill the statutory tasks the DAG provided the Board at the September 8, 2016 meeting. The statutes are 55-2203(9), 55-2203(13), 55-2203(14), 55-2203(17), 55-2208(4), 55-2208(5), and 55-2211(1). The Chairman called for volunteers. Subcommittee #1 will be chaired by Vaughn Rasmussen and will include Joe Leckie, Mark Van Slyke, Jerry Piper and Linda Phillips. Subcommittee #2 will be chaired by Joe Leckie and will be comprised of Jerry Piper, Linda Phillips and Vaughn Rasmussen. Subcommittee #3 will be chaired by Scott Spears and will consist of Jeffrey Diehl, Nichole Rush and Bob Chandler. Jerry Piper inquired if the subcommittees were bound to the Open Meeting Law? Patrick Grace, DAG, researched the question and advised the Board they would not be bound to the Open Meeting Law.

Jerry Piper proposed each subcommittee provide a report at the January meeting; standing agenda item for each meeting.

The Chairman called for a motion.

MOTION: Joe Leckie made a motion to move forward with the formation of the subcommittees, Linda Phillips seconded. Vote called, all in favor, motion carried.

ACTION: Three subcommittees have been formed with assigned tasks and will provide reports at the Board meetings as a standing agenda item.

◆ **Pipeline & Hazardous Materials Safety Administration (PHMSA)**

The PHMSA presentation was postponed until the January meeting. Chairman Van Slyke asked Joe Leckie if he had any information for the Board on PHMSA in advance of the presentation. Joe informed the Board Idaho went through the PHMSA review in June for adequacy and inadequacy, that determination has not been made public yet, so he is not aware if Idaho was deemed adequate or inadequate. Seven states have been deemed inadequate and five have been deemed adequate. Idaho will probably be in the next group of states where the decision will be revealed. Joe advised PHMSA will scale the degree of inadequacy in the determination; however, it is unclear on how that will be measured, but are afforded a grace period to address deficiencies. If Idaho is deemed inadequate, it will be

based upon the old law and Joe is confident with the passing of the new law and creation of the Idaho Damage Prevention Board, Idaho will be afforded some leeway. Discussion continued. Linda Phillips inquired what the parameters were for the states that were determined adequate. Joe has not afforded a lot of time assessing this information, however, the sense he gets is the PHMSA committee that is performing the review appreciates the Idaho Damage Prevention Board model. Chairman Van Slyke expressed the ultimate goal is to stop damages to underground facilities. Joe emphasized the need for metrics to reveal success with the reduction of damages. Joe will attempt to gather as much information on adequate and inadequate plans for the presentation at the January meeting.

♦ **Damage Information Reporting Tool (DIRT) Report**

Steve Keys referred to the information included in the board packet on virtual private DIRT. Steve does support this is probably the best solution to gathering data relative to incidents; however, there doesn't appear to be a mechanism for capturing or enabling the enforcement of reporting an incident. Steve clarified the information is not specific to the parties involved, it is basically anonymous, but is the mechanism that most other jurisdictions use to gather this data. Under the statute, there are two different levels of reporting; a level for gathering information relative to the overall performance and; the complaint process that comes to the Board where it is expected to take action. The recommendation DBS would make to the Board is for the Board to proceed down the path of developing a virtual DIRT reporting mechanism for the state of Idaho. Steve revealed costs would include \$500 set-up and \$500 annually, initial cost \$1,000. Another consideration to take into account is whether utilities are currently using virtual DIRT, if they have their own virtual DIRT reporting mechanism at this time or not, because the way virtual DIRT works is based upon a hierarchal system that accumulates all of the data into the national report. If there were other entities in Idaho that have their own virtual DIRT reports, their data would need to flow into the Idaho report. Steve is confident this option would be far less expensive for Idaho than trying to develop our own data collection program. Linda Phillips offered she didn't believe any entities had their own virtual DIRT private report. Linda reported there are currently 20-24 entities (underground facility owners) that are reporting to DIRT now, but she explained there are also approximately a dozen entities that don't have annual damages that just forward their information along to the one-call center. Discussion continued. Placement of the virtual DIRT report for the state of Idaho could be housed on the Division of Building Safety's website.

Discussion continued on the process to notify all underground facility owners of the need to report their information on the Idaho virtual DIRT report through a link on the DBS website. Concern was expressed on how the Board could get all entities to report their data. The Board has the ability to impose civil penalties. Enforcement sanctions were discussed. Steve emphasized the virtual DIRT report cannot be used for regulatory action, it is frowned upon.

Vaughn Rasmussen expressed desire to speak with someone that is using the virtual DIRT report. Chairman Van Slyke inquired with Linda Phillips if there was a 'quasi expert' that could speak to the Board. Linda confirmed the person is from Colorado and she will make contact to see if he could provide a presentation to the Board in January.

- ◆ **Larsen Farms Complaint**

Vaughn Rasmussen reported he received a call from DBS with a reported concern from Larsen Farms, a big farmer north of Rexburg in the Du Bois area; they process alfalfa and ship worldwide. Vaughn contacted the foreman and was notified he wasn't able to get anyone to come out and locate lines, it was a valid complaint. Vaughn was able to make some calls into the one-call center and was able to get him help. The question Vaughn posed to the Board was, is this an issue the Board would manage as a complaint or does it have to be after damages occur. Linda Phillips advised there is a misconception the one-call center performs the locate, they don't; it was the locate company for the underground facility owner. Discussion continued. The Damage Prevention Board statute addresses non-compliance. Administrator Pearce extended appreciation on behalf of DBS to Vaughn Rasmussen for his assistance with the matter. Chairman Van Slyke believes the process is already working!

- ◆ **Open Meeting Law**

Patrick Grace was asked at the last Board meeting to provide a more in-depth summary of the Open Meeting Law. Patrick distributed the Open Meeting Law Manuals that are distributed by the Attorney General's Office. Idaho Code 74-201 states the general purpose of the Open Meeting Law. Patrick continued, whenever a board makes a decision, it has to be done in a public meeting; a judicatory situation applies as well. Interpretation by the DAG; has to be a meeting with a quorum with the intent to decide or deliberate on an issue. The DAG continued the review. Section 74-204 addresses the notice of meetings, regular meetings must be noticed not less than five (5) calendar days, posting of agenda must be done two days prior to the meeting. The DBS will be responsible for notice and posting requirements for the Damage Prevention Board. Special meetings require at least 24 hours for both notice and posting of the agenda. Executive session can only be had in the confines of a meeting which requires notice; it must be on the agenda. Section 74-205 written minutes requirement reviewed. Minutes are required for executive session; you have to conclude sufficient detail to identify the topic or purpose of the executive session, but not information sufficient to compromise the purpose of going into executive session, roll call, vote with 2/3 approval, and cite the subsection of the law. Executive session is not the proper forum to make any final decisions, discussions only. Review continued. Final section 74-208, violation of the Open Meeting Law; all decisions at the meeting are made null and void, and members that participate in a meeting that violates the Open Meeting Law are subject to a \$250 civil

penalty. There is an appeal process to try to cure the violation and there are prescribed timelines for the cure process to take place.

◆ **Administrator Report**

Kelly Pearce explained, traditionally, we would have Fred Sisneros, Financial Manager, provide a financial report at this point in the meeting, however, there really are no finances, however included in the back of your board packet is a report of expenditures that have been made; without going into detail the expenditures are the administrative charges. Kelly Pearce called upon Linda Phillips to provide a review of the report on ticket volume from 2006-2016. Review continued. Kelly stated the annual estimation is about \$80,000 in cash flow for the Board. Once the Board gets beyond the federal grant monies, there aren't any guarantees of future monies. The grant monies have yet to be received, DBS has been working with two separate federal agencies in an attempt to get some definitive information on the delivery of funds. With Joe Leckie's assistance, Kelly believes they have instructed the agency to 'cut the check'. Kelly provided an overview of the building activity with a comparison from 2008 to 2016. Linda cautioned the trends that Kelly cited with the building industry holds true with the ticket projections.

◆ **Adjournment**

MOTION: Jerry Piper made a motion to adjourn the meeting, Nichole Rush seconded. Vote taken, all in favor, motion carried.

The meeting adjourned at 12:10 p.m. (MT)



MARK VAN SLYKE, CHAIRMAN
IDAHO DAMAGE PREVENTION BOARD



CHRIS JENSEN, ADMINISTRATOR
DIVISION OF BUILDING SAFETY

1-26-17
DATE

1-30-17
DATE

*These DRAFT minutes are subject to possible correction and final approval by the Idaho Damage Prevention Board. 1/5/17llj