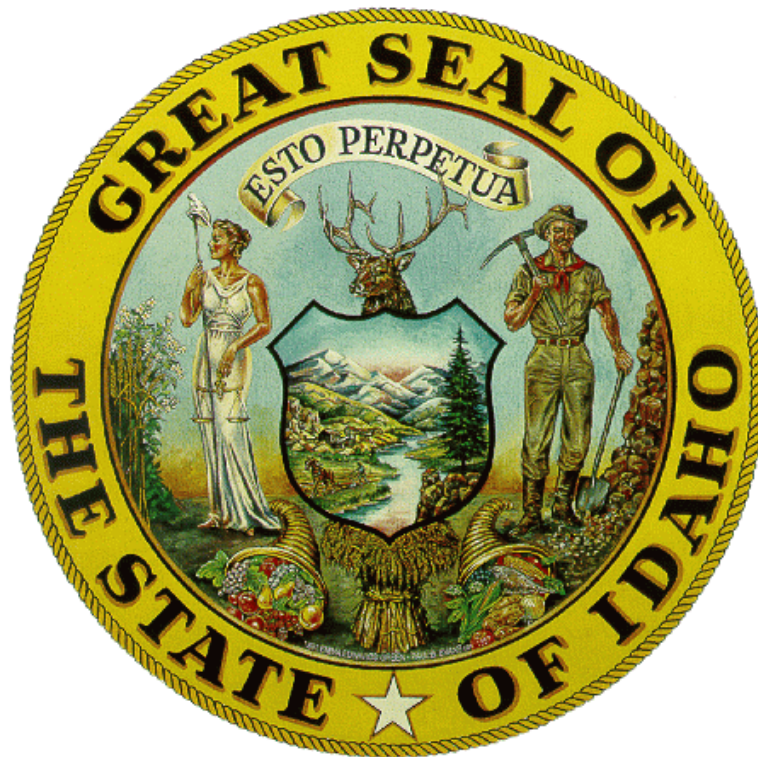


DIVISION OF BUILDING SAFETY

DAMAGE PREVENTION BOARD
VIDEOCONFERENCE MEETING

JULY 13, 2017



DAMAGE PREVENTION BOARD

Agenda Item No. 01

Agenda

PRESENTER: Mark Van Slyke, Chairman

OBJECTIVE: Approve agenda for the July 13, 2017 Damage Prevention Board meeting.

ACTION: Consent

BACKGROUND:

**PROCEDURAL
HISTORY:**

ATTACHMENTS: Tentative agenda



TENTATIVE AGENDA

NOTICE OF PUBLIC HEARING/PUBLIC MEETING

DAMAGE PREVENTION BOARD VIDEOCONFERENCE MEETING

**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**

dbz.idaho.gov – (208) 332-7137

***Thursday, July 13, 2017
9:30 a.m. – 3:00 p.m. (MDT)***

(Note: North Idaho - Meeting Commences @ 8:30 a.m. PDT)

9:30 a.m.

CALL TO ORDER – Mark Van Slyke, Chairman

- Roll Call & Introductions
- Open Forum

CONSENT AGENDA

1. Approval of the July 13, 2017 Agenda – Mark Van Slyke
2. Approval of the May 25, 2017 Board Meeting Minutes – Mark Van Slyke

PUBLIC HEARING

3. Negotiated Rulemaking – Mark Van Slyke
 - a. Education and Training Materials
 - b. Civil Penalties
 - c. Complaint Process

ACTION AGENDA

4. Negotiated Rulemaking – Mark Van Slyke
 - a. Education and Training Materials
 - b. Civil Penalties
 - c. Complaint Process
5. PHMSA -- Idaho Damage Prevention Audit of Adequacy – Joe Leckie, Board Member
 - a. David Appelbaum, State Evaluator, PHMSA
 - i. Discussion of Program
 - ii. Audit?

INFORMATIONAL AGENDA

6. Damage Prevention Board Ad Campaign – Tom Scott, Tom Scott Agency
7. DIRT Contract/Agreement – Linda Phillips, Board Member and Patrick Grace, Deputy Attorney General
8. DBS/DPB Damage Complaints -- Confidential Information – Nichole Rush, Board Member
9. DPB Web Site – Mark Van Slyke
10. Administrator Report – Chris L. Jensen, Administrator
 - a. Financial Report
 - b. Grant Report

3:00 p.m. ADJOURN

All times, other than beginning, are approximate and scheduled according to Mountain Daylight Time (MDT), unless otherwise noted. Agenda items may shift depending on Board preference. 06/29/2017rb

DAMAGE PREVENTION BOARD

Agenda Item No. 02

Minutes

PRESENTER: Mark Van Slyke, Chairman

OBJECTIVE: Approve minutes from the May 25, 2017 Damage Prevention Board meeting.

ACTION: Consent

BACKGROUND:

**PROCEDURAL
HISTORY:**

ATTACHMENTS: Draft minutes



**DAMAGE PREVENTION BOARD
VIDEOCONFERENCE MEETING**

Thursday – May 25, 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**

***DRAFT MINUTES OF THE MAY 25, 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-Absent
Jeanna Anderson
Bob Chandler
Jeffrey Diehl
Roy Ellis
Joe Leckie – Absent
Linda Phillips
Jerry Piper
Nichole Rush
Scott Spears

DBS Staff Members Present:

Chris L. Jensen, Administrator
Ron Whitney, Deputy Administrator
Patrick Grace, Office of the Attorney General
Kayla Harris, Administrative Assistant 1
Renee Bryant, Administrative Assistant 2

♦ **Open Forum**

No issues were brought forward during the open forum.

♦ **Approval of the May 25, 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 Chandler seconded. Vote called, all in favor, motion carried.

♦ **Approval of the March 23, 2017 Board Meeting Minutes**

The Chairman called for the approval of the draft minutes.

MOTION: Board Member Diehl made a motion to approve the March 23, 2017 Board Meeting Minutes as written. Board Member Chandler seconded. Vote called, all in favor, motion carried.

◆ **Approval of the April 27, 2017 Special Board Meeting Minutes**

The Chairman called for the approval of the draft special minutes.

MOTION: Board Member Rush made a motion to approve the April 27, 2017 Special Board Meeting Minutes as written. Board Member Spears seconded. Vote called, all in favor, motion carried.

◆ **Damage Prevention Board Ad Campaign**

Tom Scott, Tom Scott Agency, went over the ad campaign budget. The presentation included a handout of each area the money would be allocated, digital campaign's market target audience, contractors, homeowners, excavators, rental equipment agencies with a demographic of 25-64 year old male. He explained the first thirty days is gathering data, then how to alter the advertising from there. The digital campaign would be modified for the northern region, as there are different television service providers stationed out of Washington. He went over the television Public Service Announcement (PSA) air times; totaling 910 spots throughout Idaho.

Board Member Jeanna Anderson asked how data is collected. Mr. Scott explained there are advertising linguistics for internet ads referred to as 'click through' and 'impressions', whether a user clicked on the ad or simply saw it. Board Member Linda Phillips inquired where clicking the ad would lead. Tom Scott said the site location was at the Board's discretion. Board Member Anderson asked if the Board is required to approve any ad alterations before the agency updates the campaign after the gathering of data in June. Board Member Bob Chandler inquired on a PSA through Washington to cover northern Idaho. Tom Scott explained it would have to go through the corresponding board in Washington. Chairman Van Slyke suggested a consortium with other Idaho agencies; i.e., Intermountain Gas, Avista, Idaho Power. Tom Scott showed the Board the digital PSA and explained changes could be made depending on what agency it is partnered with. After discussion, the Board agreed the Idaho Damage Prevention Board would sponsor all PSAs. Deputy Attorney General Patrick Grace recommended a professional service agreement for budget purposes.

Tom Scott Advertising will bring the compilation of advertising to the July 13th Board Meeting.

MOTION: Board Member Phillips made a motion to approve the advertising purchase with Tom Scott Agency. 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.

Education and Training Materials – There were no comments on this topic at this time.

Complaint Process – Wayne Hammon with Idaho Associated General Contractors addressed issues he saw with the draft rule on procedures. In reference to IDAPA 07.10.01.010.01, the suggested edit was ‘failure to comply means the complaint has not been filed’. In 07.10.01.010.02, the suggested edit was ‘incomplete complaints are rejected’. The next suggested edit was in the timeframe given to respond in 07.10.01.010.03(b), which should read ‘not less than 30 days’. Mr. Hammon also recommended a maximum and minimum timeframe be given to avoid legal issues. DAG Grace suggested the verbiage ‘within 30 days’.

Board Member Phillips inquired about the complainant having to serve the violator notification. Mr. Hammon explained legally that is what the rule states. DAG Grace gave a suggestion for the rule to read ‘failure to comply with any of the requirements may render your application rejected’.

Board Member Nichole Rush asked about serving the alleged violator with evidence; i.e., email, certified mail, etc. Board Member Rush discussed the purpose behind serving. Board Member Scott Spears believes it is important for the burden to be on the complainant to notify the alleged violator of the complaint and endorses requiring proof of notice. Board Member Jerry Piper recommended the draft language in 07.10.01.010.01 should read, ‘Shall provide proof of notice to be concurrently served’.

Civil Penalty – Wayne Hammon had a question on the contest section of the rule on appealing through the Board. As the rule currently reads, you cannot appeal the first offense to the Board. DAG Grace explained the statute states the violator should also have a right to contest a civil penalty to the Board.

◆ **Subcommittee Reports**

Sub#1 – Education and Training Materials – Chairman Van Slyke gave the subcommittee report for training and education in Vice-Chairman Rasmussen’s absence.

Chairman Van Slyke went over their proposed rules and education materials. The Chairman addressed the “Dig Safe Certification” program for remedial training.

Deputy Administrator Ron Whitney discussed pamphlets and drafted letters. Mr. Whitney shared he would meet with DAG Grace after the meeting to discuss the drafted letter language. Deputy Administrator Whitney went over the statewide county clerk mailing list for distribution of the letter. Chairman Van Slyke inquired about the printing of the booklets. Ron Whitney confirmed the Idaho Correctional Facilities has finished printing the booklets and should arrive any day. He also agreed to disseminate the boxes of booklets between the Division’s three statewide offices.

Sub#2 – Civil Penalties – Board Member Joe Leckie, who was absent, chairs the subcommittee for civil penalties. DAG Grace explained the IDAPA rules. Board Member Chandler asked about the one call notification. Board Member Phillips explained the

broadened definition of participate and cooperate. Board Member Piper suggested changing the verbiage in the definition from ‘cooperate’ to ‘comply’. DAG Grace explained the civil penalties, as written in the law.

Sub#3 – Complaint Process – In reference to IDAPA 07.10.01.010.01, Board Member Rush inquired about the requirement to report damages through Damage Information Reporting Tool (DIRT). DAG Grace clarified the requirement is in 07.10.01.011.02. Board Member Spears, Subcommittee Chair for the complaint process, had nothing to add at this time.

Sub#4 – Hand Dig Rule – The Subcommittee reviewed the definitions of ‘hand dig’ and ‘soft dig’. Board Member Anderson read the definitions DAG Grace had proposed. Board Member Phillips asked if excavators would agree with the current drafted definition. Chairman Van Slyke responded there have been no formal complaints.

◆ **Gold Shovel Standards**

Board Member Anderson demonstrated a walkthrough of the ‘Gold Shovel Standard’ website. She explained it is a certification program for contractors to be required to hold a higher level of compliance. Chairman Van Slyke requested clarification on necessities of losing certification. Board Member Phillips queried the training provided or the costs incurred with the Gold Shovel Standard program. Board Member Diehl expanded by saying the program is a resource for contractors and excavators. Linda Burger from Avista stated Pacific Gas and Electric created the program.

◆ **DIRT Contract/Agreement**

DAG Grace discussed the white paper security contract and the memorandum the Common Ground Alliance (CGA) requires for purchase of their website. He explained it falls under a subscription and it is legally allowable for the Board to purchase a subscription from CGA. Board Member Phillips asked if CGA would allow access and shared contact information for Virtual Private Dirt (VPD) contact. DAG Grace will request clarification from the VPD manager.

◆ **Damage Prevention Board Web Page**

Board Member Phillips demonstrated a walkthrough of the Damage Prevention Board’s test website. She prompted a discussion of the CGA’s best practices guidelines, located within the website. Board Member Piper suggested a subcommittee for the website development, and Administrator Jensen recommended authorizing the DBS to adjust the website accordingly. Board Member Rush wanted clarification on non-working website links. Board Member Phillips, working with the Division’s IT, gave an update on the progression of the website. Board Member Piper proposed to remove working bulletins from the website until it is properly functioning, while Board Member Anderson suggested an ‘under construction’ banner. A timeline to set up the website to function for the public, with the placement of the DBS letter under the forms tabs until further notice.

♦ **Administrator Report**

Financial Report – Deputy Administrator Whitney presented the Boards budget and deadlines for grant funds. Board Member Rush requested a breakdown of the Boards spending budget.

ACTION: At the July Board meeting, the Division will provide an itemized list of current expenditures.

♦ **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

CHRIS L. JENSEN, ADMINISTRATOR
DIVISION OF BUILDING SAFETY

DATE

DATE

*These DRAFT minutes are subject to possible correction and final approval by the Damage Prevention Board. 06/29/17kh

DAMAGE PREVENTION BOARD

Agenda Item No. 03

Negotiated Rulemaking/Public Hearing

PRESENTER: Mark Van Slyke, Chairman

OBJECTIVE: Review proposed rules for the Damage Prevention Board.

ACTION: Informational

BACKGROUND:

**PROCEDURAL
HISTORY:**

ATTACHMENTS:

- a. Proposed Rule on Education and Training Materials
- b. Proposed Rule on Civil Penalties
- c. Proposed Rule on Complaint Process



011. EDUCATIONAL AND TRAINING MATERIALS

01. The Damage Prevention Board shall approve and provide public notice through the Division of Building Safety acceptable training courses or programs and educational materials on pertinent underground facility damage prevention topics pertaining to safe excavation, locating and marking of facilities, determining facility damage, emergency procedures, excavator downtime, pre-marking of intended excavation areas, and appropriate procedures when encountering unmarked facilities.

02. Such training programs and educational materials shall relate to various aspects of underground facility damage prevention, and shall contain practices, information, and standards generally accepted and recognized among stakeholders in Idaho.

03. The Division of Building Safety shall maintain a data base of approved educational materials and training programs, and periodically update such as may be required by the Board. The Division shall cause such educational materials and the identity of such training programs to be placed on its website so that interested persons may view it online.

04. Such programs may be used for general educational use by stakeholders or for remedial training that may be ordered by the board pursuant to section 55-2211, Idaho Code. Should completion of a training course by a Stakeholder be required as a result of a violation of this chapter in accordance with section 55-2211, Idaho Code, The division shall record and maintain validation of successful completion of any such required training for two (2) years from date of completion.

**For reference only - the statutory provision requiring this rule is 55-2203(13) and it states:

(13) The board shall adopt, by rule, a process for reviewing the adequacy of underground facility owners' use of internal performance measures for those locating underground facilities and recommending changes to improve such performance.

012. ADEQUACY OF UNDERGROUND FACILITY OWNERS LOCATING UNDERGROUND FACILITIES.

01. The board will review all Stakeholder complaints of violation related to underground facility line locating generally accepted practices and procedures. The Stakeholder will make remedial action to improve line locating performance and will monitor and report performance improvements to the board.

**For reference only - the statutory provision requiring this rule is 55-2203(14) and it states:

(14) The board shall adopt, by rule, a process for reviewing and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications, underground facility locating capability and the gathering and analysis of appropriate data.

013. IMPROVEMENT OF TECHNOLOGY AND COMMUNICATIONS BY STAKEHOLDERS.

01. On an annual basis the board will review and adopt any available technology and communications materials which promote effective underground facility locating. The board shall make available any such appropriate technology and communications materials as it may determine to all Stakeholders on the Division of Building website found at <http://dbs.idaho.gov>.

02. The board may request that stakeholders provide it with information or data related to procedures, methods, or technologies utilized by such stakeholders to enhance communications among other stakeholders, or that enhances underground facility locating capabilities, or enhances the stakeholder's ability to gather and analyze data related to underground facility damage. The Board shall review such technologies, methods, or materials adopted by stakeholders to ensure that such use is adequate, as well as to provide stakeholders with best practices. The Division of Building Safety shall maintain an approved data base of such referenced Stakeholder data for public viewing and analysis on its website.

**IDAPA 07
TITLE 10
CHAPTER 01**

**07.10.01 - RULES GOVERNING THE DAMAGE PREVENTION BOARD,
DIVISION OF BUILDING SAFETY**

000. LEGAL AUTHORITY.

The Idaho Damage Prevention Board of the Division of Building Safety is authorized under Section 55-2203, Idaho Code, to promulgate rules consistent with the act for the administration of Title 55, Chapter 22, Idaho Code, to effectuate the purposes thereof. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 07.10.01, “Rules Governing the Damage Prevention Board, Division of Building Safety.” ()

02. Scope. These rules shall be applicable to underground facilities, and facility owners as established in Title 55, Chapter 22, Idaho Code. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Division of Building Safety offices. ()

003. ADMINISTRATIVE APPEALS.

IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General,” Section 100, et seq., shall apply to contested cases, in addition to the provisions of Title 55, Chapter 22, Idaho Code. ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. ()

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Damage Prevention Board is at the Division of Building Safety office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Damage Prevention Board may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d’Alene, Idaho 83814, and at 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ()

007. FUNDING OF BOARD ACTIVITIES.

Each owner of an underground facility shall pay a fee of ten cents (\$.10) each time such owner receives notice from a one-number notification service as required by Section 55-2205, Idaho Code. The fee assessed upon the underground facility owner shall be collected by the one-number notification service, and shall be payable to the board in accord with the following schedule: ()

01. Fee Assessed. The fee shall be assessed on an underground facility owner for each notification

issued by the one-number notification service to the underground facility owner, with the one-number notification service required to submit a summary of the number of notices issued in a given month to the board no later than fifteen (15) days following the end of the month in which the notices were issued. ()

02. Payment Submission. The one-number notification service shall submit payment to the board for all payments received from underground facility owners no later than seventy (70) days following the end of the month in which the notices were issued to the facility owners. In those cases where the payment from the underground utility owner is received after the seventy (70) day period, the one-number service shall include late payments in its next payment to the board. ()

03. Notices Issued. The one-number notification service shall also submit a detailed list of notices issued, including the facility owner’s contact information, for which payment has not been received within the seventy (70) day period following the end of the month in which the notices were issued. Such list shall be updated on a monthly basis to reflect the status of all past-due payments due from underground utility owners that have not been received. ()

04. Civil Penalties. Underground facility owners failing to submit payment to the one-number notification service in a timely manner shall be subject to the imposition of civil penalties and other remedies referenced in Title 55, Chapter 22, Idaho Code. ()

008. AUDIT OF ONE-NUMBER SERVICE RECORDS.

The board shall have the right to review and audit the payment records of any one-number notification service relating to the collection of the ten cent (\$.10) fee imposed on underground facility owners. In the event the board wishes to conduct a review and/or audit of a one-number notification service, the board shall provide no less than a five (5) business day advance notice of the intended action. The board may delegate any responsibilities contained herein in this chapter to the Division of Building Safety. ()

009. CIVIL PENALTIES

The Idaho Damage Prevention Board is authorized under Section 55-2203 (17), Idaho Code to establish by administrative rule the fines to be paid for civil penalties issued for violations of Title 55, Chapter 22, Idaho Code. To the extent authorized by Section 55-2211, Idaho Code, the acts described in this section shall subject the violator to a civil penalty of not more than one thousand dollars (\$1,000) for a second offense and a civil penalty of not more than five thousand dollars (\$5,000) for each offense that occurs thereafter within eighteen months from an earlier violation, and where facility damage has occurred. (- -18)

01. Violations of Title 55, chapter 22, Idaho Code. The following acts shall subject a person to civil penalties.

a. Pre-marking Excavation Site. Any person who fails to adequately pre-mark onsite the path of proposed excavation as reasonably required under the circumstances in accordance with section 55-2205 (1) (b) shall be subject to a civil penalty. (- -18)

b. Notice of Excavation. Any person who fails to provide notice of the scheduled commencement of excavation to any underground facility owner through a one-number notification service, or directly to a facility owner, as applicable within the prescribed time as required by section 55-2205 (1) (c) shall be subject to a civil penalty. (- -18)

c. One-Number Notification to Facility Owner. A one-number notification service that fails to provide notice of a scheduled excavation upon notification from an excavator shall be subject to a civil penalty. (- -18)

d. Failure to Locate or Mark. An underground facility owner who fails to locate or mark its underground facilities in accordance with section 55-2205 (2), Idaho Code or within the prescribed time provided therein shall be subject to a civil penalty. (- -18)

e. Failure to Wait for Locate or Maintain Markings. An excavator who commences excavation

prior to waiting for all known facilities to be located and marked, or an excavator who fails to maintain the markings of underground facilities previously so marked subsequent to the commencement of excavation in accordance with section 55-2205 (2), Idaho Code shall be subject to a civil penalty. (- -18)

f. Failure to Cease Excavation or Report Unidentified Facilities. An excavator who does not cease excavation in the immediate vicinity upon the discovery of underground facilities therein, whether such facilities be active or abandoned, which were not previously identified or located with reasonable accuracy, or does not notify the owner or operator of the facilities, or a one-number notification service in accordance with section 55-2205 (4), Idaho Code shall be subject to a civil penalty. (- -18)

g. Failure to Identify Facilities in Contract Documents. Project owners who fail to indicate in bid or contract documents the existence of underground facilities known by the owner to be located within the proposed area of excavation in accordance with section 55-2207, Idaho Code shall be subject to a civil penalty. (- -18)

h. Precautions to Avoid Damage. An excavator who does not engage in any of the activities required by section 55-2207 (2) or use reasonable care to avoid damage to underground facilities shall be subject to a civil penalty. (- -18)

i. Reporting of Damage to Facility. An excavator who fails to report to a facility owner and a one-number notification service any contact or damage to an underground facility caused by such excavator in the course of excavation, or fails to alert an appropriate authority upon an actual breach of a facility which causes the release of gas or hazardous liquids as required by section 55-2208 (1), Idaho Code shall be subject to a civil penalty. (- -18)

j. Failure to Participate. Any person who fails to participate or cooperate with a one-number notification service as required by section 55-2206 shall be subject to a civil penalty.

02. Second Offense. For the purpose of this section a second offense shall be deemed to be any violation of title 55, chapter 22 for which a civil penalty may be imposed in accordance with this section which occurs within five (5) years (but not within 18 months) of a previous violation of any provision.

03. Multiple Violations. Civil penalties may be imposed separately against a person for any distinct violation as provided for in this section regardless of whether the different violation may have resulted from the same conduct or occurred during the same incident. Each day that a violation of Chapter 22, Title 55 occurs for which a civil penalty may be imposed as provided herein shall constitute a separate offense.

04. Judicial Review. Any party aggrieved by the final action of the Idaho Damage Prevention Board shall be entitled to a judicial review thereof in accordance with the provisions of title 67, chapter 52, Idaho Code.

0109. -- 999. (RESERVED)

**IDAPA 07
TITLE 10
CHAPTER 01**

**07.10.01 - RULES GOVERNING THE DAMAGE PREVENTION BOARD, DIVISION OF
BUILDING SAFETY**

000. LEGAL AUTHORITY.

The Idaho Damage Prevention Board of the Division of Building Safety is authorized under Section 55-2203, Idaho Code, to promulgate rules consistent with the act for the administration of Title 55, Chapter 22, Idaho Code, to effectuate the purposes thereof. (12-1-16)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 07.10.01, “Rules Governing the Damage Prevention Board, Division of Building Safety.” (12-1-16)T

02. Scope. These rules shall be applicable to underground facilities, and facility owners as established in Title 55, Chapter 22, Idaho Code. (12-1-16)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Division of Building Safety offices. (12-1-16)T

003. ADMINISTRATIVE APPEALS.

IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General,” Section 100, *et seq.*, shall apply to contested cases, in addition to the provisions of Title 55, Chapter 22, Idaho Code. (12-1-16)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. (12-1-16)T

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Damage Prevention Board is at the Division of Building Safety office located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. The Damage Prevention Board may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d’Alene, Idaho 83814, and at 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The telephone number of the office is (208) 334-3950. The facsimile number of the office is 1-877-810-2840. The Department website is <http://dbs.idaho.gov>. (12-1-16)T

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (12-1-16)T

007 DEFINITIONS.

01. Hand Digging. Any excavation involving non-mechanized tools or equipment that when used properly will not damage underground facilities. Hand digging includes but is not limited to hand shovel digging, manual post hole digging, vacuum excavation, or soft digging.

02. Soft Digging. Any excavation using tools or equipment that utilize air or water pressure as the direct means to break up soil or earth for removal by vacuum excavation.

0078. FUNDING OF BOARD ACTIVITIES.

Each owner of an underground facility shall pay a fee of ten cents (\$.10) each time such owner receives notice from a one-number notification service as required by Section 55-2205, Idaho Code. The fee assessed upon the underground facility owner shall be collected by the one-number notification service, and shall be payable to the board in accord with the following schedule: (12-1-16)T

01. Fee Assessed. The fee shall be assessed on an underground facility owner for each notification issued by the one-number notification service to the underground facility owner, with the one-number notification service required to submit a summary of the number of notices issued in a given month to the board no later than fifteen (15) days following the end of the month in which the notices were issued. (12-1-16)T

02. Payment Submission. The one-number notification service shall submit payment to the board for all payments received from underground facility owners no later than seventy (70) days following the end of the month in which the notices were issued to the facility owners. In those cases where the payment from the underground utility owner is received after the seventy (70) day period, the one-notification service shall include late payments in its next payment to the board. (12-1-16)T

03. Notices Issued. The one-number notification service shall also submit a detailed list of notices issued, including the facility owner's contact information, for which payment has not been received within the seventy (70) day period following the end of the month in which the notices were issued. Such list shall be updated on a monthly basis to reflect the status of all past-due payments due from underground utility owners that have not been received. (12-1-16)T

04. Civil Penalties. Underground facility owners failing to submit payment to the one-number notification service in a timely manner shall be subject to the imposition of civil penalties and other remedies referenced in Title 55, Chapter 22, Idaho Code. (12-1-16)T

0089. AUDIT OF ONE-NUMBER SERVICE RECORDS.

The board shall have the right to review and audit the payment records of any one-number notification service relating to the collection of the ten cent (\$.10) fee imposed on underground facility owners. In the

event the board wishes to conduct a review and/or audit of a one-number notification service, the board shall provide no less than a five (5) business day advance notice of the intended action. The board may delegate any responsibilities contained herein this chapter to the Division of Building Safety.

(12-1-16)T

010. DAMAGE PREVENTION COMPLAINTS

01. Complaint Forms. Persons may submit written complaints to the administrator regarding an alleged violation of chapter 22, title 55, Idaho Code on such forms as required by the Division of Building Safety. Forms are available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150, Meridian, Idaho 83642; 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814; and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. They may also be accessed electronically on the Division's website at <http://dbs.idaho.gov/>. Notice of the complaint shall be served concurrently on the alleged violator by the person submitting the complaint. Verifiable proof of such notification of a complaint provided to the alleged violator shall also be provided to the administrator.

02. Contents. Complaints shall include the name and address of the complainant and the alleged violator, the date and location of the alleged violation, as well as a complete description of the nature of the violation alleged, including whether it resulted in damage to an underground facility or an excavator downtime event. Complainants may also provide additional documentation in support of a complaint. Complaints shall be accompanied by a sworn declaration from the complainant declaring that the information contained therein is true and accurate. The administrator may request additional information or documents in support of the complaint. Complaint forms shall be subject to chapter 1, title 74, Idaho Code.

03. Complaint Procedures and Timelines. The following timelines and procedure shall govern the process of filing and administering complaints related to violations of title 55, chapter 22, Idaho Code, and the rules of the damage prevention board.

a. Initial Filing. Complaints shall be filed with the administrator not later than thirty (30) days from the date of the alleged violation giving rise to the complaint or from the date the violation should have reasonably been discovered by the Complainant, whichever is later.

b. Response. The administrator shall notify the alleged violator of the complaint and request a response and any additional information from the alleged violator as may be necessary. The alleged violator may provide a response to the administrator within thirty (30) days from the date they are notified of the complaint by the administrator.

c. Recommendation. Within thirty (30) days of receipt of the response, or if no response is received, within fifteen (15) days from the deadline for filing a response, the administrator shall notify the Complainant and the alleged violator of his recommended course of action. The administrator may extend the period of time in which to determine a recommended course of action, and so notify the parties, if he determines it is necessary to further review or investigate the complaint.

d. Contest. In accordance with section 55-2211, Idaho Code, the alleged violator shall have the right to contest the imposition of a civil penalty before the damage prevention board. Notice of such contest shall be provided by the alleged violator not more than thirty (30) days after receipt

of the administrator's recommended course of action. Recommendations of the administrator regarding complaints may be reviewed by the Board at its next regularly scheduled meeting.

011 CLAIMS AND REPORTS OF DAMAGE OR EXCAVATOR DOWNTIME

01. Claims. Claims for the cost of repairs for damaged underground facilities shall be enforced by the affected underground facility owner in accordance with procedures as may be established by the facility owner, and in accordance with applicable law. Underground facility owners shall provide notice to excavator contractors of such procedures, along with sufficient information supporting the basis for the amount of a claim within six (6) months from the date of the event giving rise to the claim or from the date the event should have reasonably been discovered by the underground facility owner, whichever is later.

02. Reports. Underground facility owners and excavators who observe, suffer or cause damage to an underground facility or observe, suffer or cause excavator downtime related to a failure of one (1) or more stakeholders to comply with applicable damage prevention statutes or regulations shall report such information to the board on forms or by such method adopted for such by the Board. Forms are available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150, Meridian, Idaho 83642; 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814; and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. They may also be accessed electronically on the Division's website at <http://dbs.idaho.gov/>.



**IDAHO DAMAGE PREVENTION BOARD
STATE OF IDAHO DIVISION OF BUILDING SAFETY**

1090 East Watertower Street, Suite 150
Meridian, Idaho 83642
Ph: 800-955-3044
Fax: 877-810-2840
Email: customer.service@dbs.idaho.gov
dbs.idaho.gov

DAMAGE PREVENTION COMPLAINT FORM

This complaint form is authorized pursuant to section 55-2011, Idaho Code, and the rules of the Damage Prevention Board. It is a public record subject to the provisions of chapter 2, title 74, Idaho Code. This document is a formal complaint form from which discipline may be imposed on the alleged violator pursuant to section 55-2211, Idaho Code. General reports of underground facility damage or excavator downtime, which are not complaints but required by section 55-2208(5), Idaho Code should be made separately in accordance with procedures established by the Board.

Company or Person(s) making the complaint: _____

Address _____ City _____ State _____ Zip _____

Phone Number _____ Email Address _____

Company or Person(s) committing alleged violation: _____

Address _____ City _____ State _____ Zip _____

Phone Number _____ Email Address _____

Location of alleged violation: _____
Address _____

City _____ State _____ Zip _____

Date(s) of alleged violation: _____

Date(s) Complainant became aware of alleged violation (if different): _____

Description of alleged violation (attach additional pages if necessary): _____



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Did the violation cause damage to an underground facility? Yes No

If yes, explain: _____

Did the violation cause excavator downtime? Yes No

If yes, explain: _____

In accordance with IDAPA rule 07.10.01.101.01, notice of a complaint shall also be served concurrently on the alleged violator by the person submitting the complaint. Verifiable proof of such notification of a complaint provided to the alleged violator shall also be provided to the administrator.

Has written notification of this complaint been provided to the alleged violator? Yes No

If yes, provide date and attach a copy of such notification: _____

If no, explain: _____

Please include any additional documents, photographs, invoices, contracts and/or other relevant information in support of the complaint and attach it to this complaint form.

I swear (or affirm) under penalty of perjury that the foregoing information is true, complete, and correct. Additionally, I agree to assist the Division and Board in the resolution of this complaint, and if necessary appear before the board to verify and support the information contained in this complaint.

Name (Print or Type)

Signature

Date Executed

DAMAGE PREVENTION BOARD

Agenda Item No. 04

Negotiated Rulemaking

PRESENTER: Mark Van Slyke, Chairman

OBJECTIVE: Vote on the following: a) Education and Training Materials, b) Civil Penalties and c) Complaint Process

ACTION: Accept or reject the proposed rules.

BACKGROUND:

PROCEDURAL HISTORY:

ATTACHMENTS: See agenda item 03 for supporting documentation.



DAMAGE PREVENTION BOARD

Agenda Item No. 05 PHMSA--Idaho Damage Prevention Audit of Adequacy

PRESENTER: Joe Leckie, Board Member

OBJECTIVE: Discussion of program and audit.

ACTION: Informational

BACKGROUND: David Appelbaum, PHMSA State Evaluator will discuss the program and auditing process.

**PROCEDURAL
HISTORY:**

ATTACHMENTS: No documentation



DAMAGE PREVENTION BOARD

Agenda Item No. 06

Damage Prevention Board Ad Campaign

PRESENTER: Tom Scott, Tom Scott Advertising

OBJECTIVE: Review ad campaign; i.e., ads, placements, time frames, etc.

ACTION: Informational

BACKGROUND: April 2017 – Tom Scott, Tom Scott Advertising, presented marketing strategies, and media marketing through Facebook and Public Service Announcements via television and radio statewide.

May 2017 – Presented and approved at the May meeting was an official advertising proposal. Mr. Scott will provide, in detail, the current ads and placements, as well as the number of times they have and will be shown.

**PROCEDURAL
HISTORY:**

ATTACHMENTS: No documentation



DAMAGE PREVENTION BOARD

Agenda Item No. 07

DIRT Contract/Agreement

PRESENTER: Linda Phillips, Board Member and Patrick Grace, Deputy Attorney General

OBJECTIVE: Clarify whether the Board can have access and share contact information from CGA for the Virtual Private Dirt (VPD) contacts.

ACTION: Informational

BACKGROUND: April 2017 – Board Member Nichole Rush walked the Board through the Virtual Dirt website to show what it takes to grant access to the Damage Prevention Board. Deputy Attorney General Patrick Grace asked if there would be a legal agreement between the Common Ground Alliance and Damage Prevention Board if access to the website were purchased. Board Member Phillips stated yes, and she would request a copy for DAG Grace.

May 2017 - DAG Grace discussed the white paper security contract and memorandum the Common Ground Alliance (CGA) require for purchase of their website. He explained it falls under a subscription and is legally allowable for the Board to purchase a subscription from CGA. Board Member Phillips asked if CGA would allow access and share contact information for Virtual Private Dirt (VPD) contact. DAG Grace will request clarification from the VPD manager.

PROCEDURAL HISTORY:

ATTACHMENTS: No documentation



DAMAGE PREVENTION BOARD

Agenda Item No. 08 DBS/DPB Damage Complaints-Confidential Information

PRESENTER: Nichole Rush, Board Member

OBJECTIVE:

ACTION: Informational

BACKGROUND: May 2017 – In reference to IDAPA 07.10.01.010.01, Board Member Nichole Rush inquired about the requirement to report damages through Damage Information Reporting Tool (DIRT). Deputy Attorney General Patrick Grace clarified the requirement is in 07.10.01.011.02.

PROCEDURAL HISTORY:

ATTACHMENTS: No documentation



DAMAGE PREVENTION BOARD

Agenda Item No. 09

Damage Prevention Board Web Page

PRESENTER: Mark Van Slyke, Board Member

OBJECTIVE: Review the DP Board's new web site.

ACTION: Informational

BACKGROUND: https://dbs.idaho.gov/damage_prev_temp/index.html

**PROCEDURAL
HISTORY:**

ATTACHMENTS: No documentation



DAMAGE PREVENTION BOARD

Agenda Item No. 10

Administrator Report

PRESENTER: Chris L. Jensen, Administrator

OBJECTIVE: Provide an overview of the Division's current activities.

ACTION: Informational

BACKGROUND: This topic is addressed at all regularly scheduled Damage Prevention Board meetings.

PROCEDURAL HISTORY:

ATTACHMENTS: No documentation





Division of Building Safety
UNDERGROUND FACILITIES DAMAGE PREVENTION
 Fiscal Year 2017 Financial Statements
 As of 5/31/2017

Statement of Revenues and Expenditures - 0229-27 Dedicated Fund

Class	Budget	Fiscal Year To Date	YTD as a % of Budget	Remaining Budget	Projected for Remainder of Year	Projected Year End Totals	Projected Total as a % of Budget
Revenues:	50,000	33,829	68%	16,171	16,171	50,000	100%
Expenditures							
Personnel:	-	4,174	0%	(4,174)	522	4,696	0%
Operating:	50,000	11,211	22%	38,789	44,842	56,053	112%
Capital:	-	1,009	0%	(1,009)	0	1,009	0%
Total Expenditures	50,000	16,394	33%	33,606	45,364	61,758	124%
Net for FY 2017	-	17,436			(29,193)	(11,758)	

Statement of Cash Balance - 0229-27 Dedicated Fund

July 1, 2016 Beginning Cash Available	Fiscal Year to Date Revenues	Fiscal Year to Date Expenditures and Encumbrances	Other Changes in Cash	Available Cash as of May 31, 2017	Projected Change in Cash for Remainder of Year	Projected Year End Available Cash
-	33,829	16,394	-594	16,841	(29,193)	(12,352)

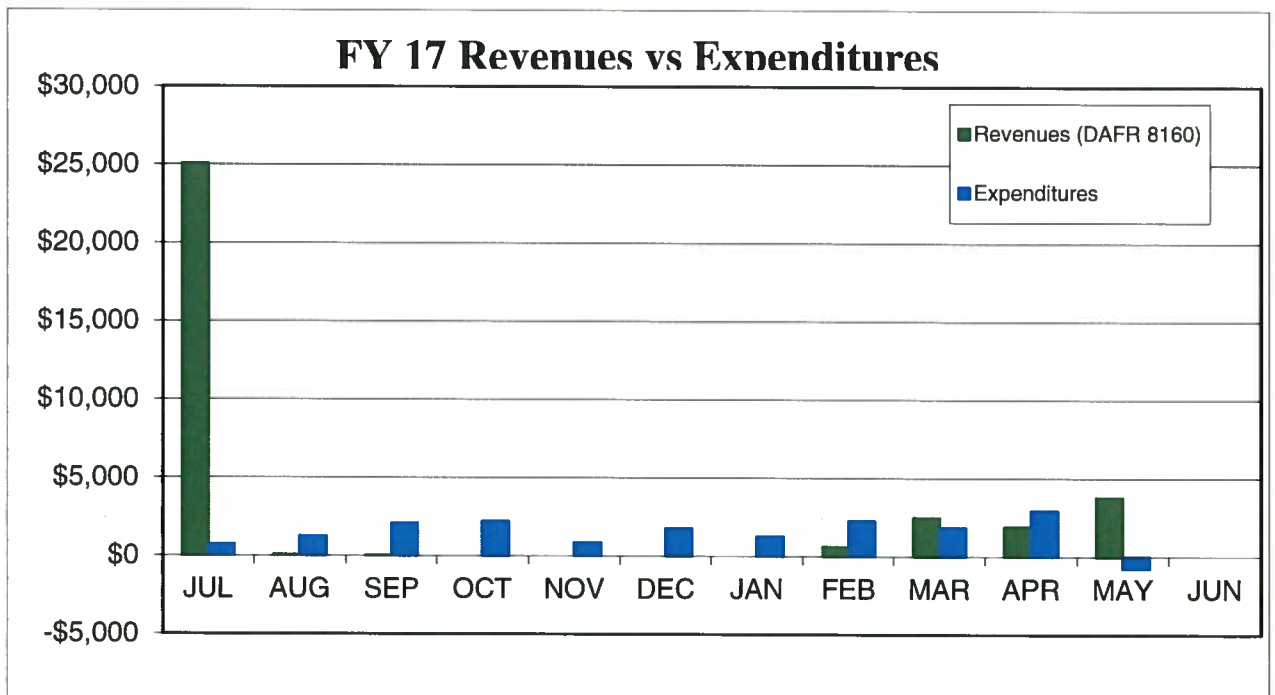
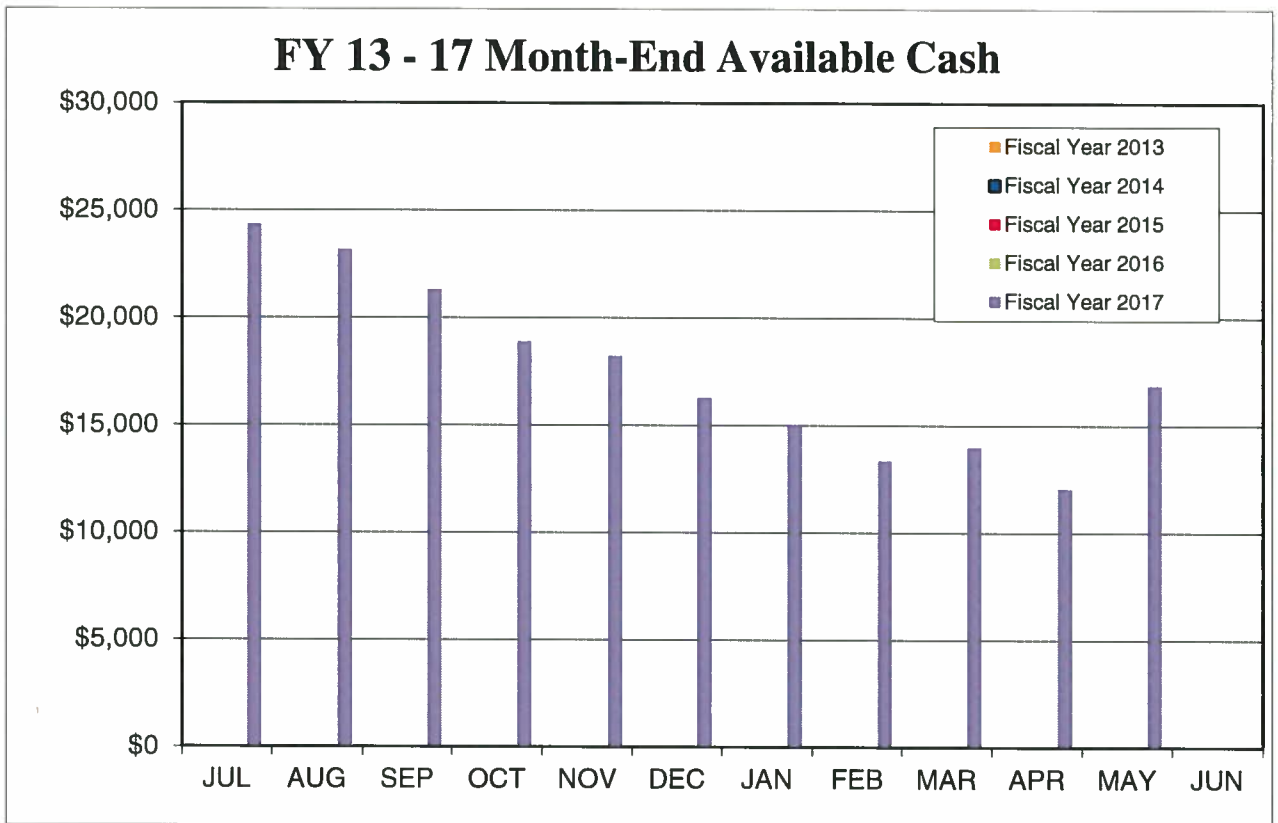
Statement of Revenues and Expenditures - 0348-00 Federal Grant (State Damage Prevention Program Grant - 2016)

Class	Budget	Fiscal Year To Date	YTD as a % of Budget	Remaining Budget	Projected for Remainder of Year	Projected Year End Totals	Projected Total as a % of Budget
Revenues:	83,638	41,819	50%	41,819	41,819	83,638	100%
Expenditures							
Personnel:	23,611	8,031	34%	15,580	1,004	9,035	38%
Operating:	60,027	5,225	9%	54,801	20,900	26,125	44%
Capital:	-	-	0%	0	0	0	0%
Total Expenditures	83,638	13,256	16%	70,381	21,904	35,160	42%
Net for FY 2017	-	28,563			19,915	48,477	

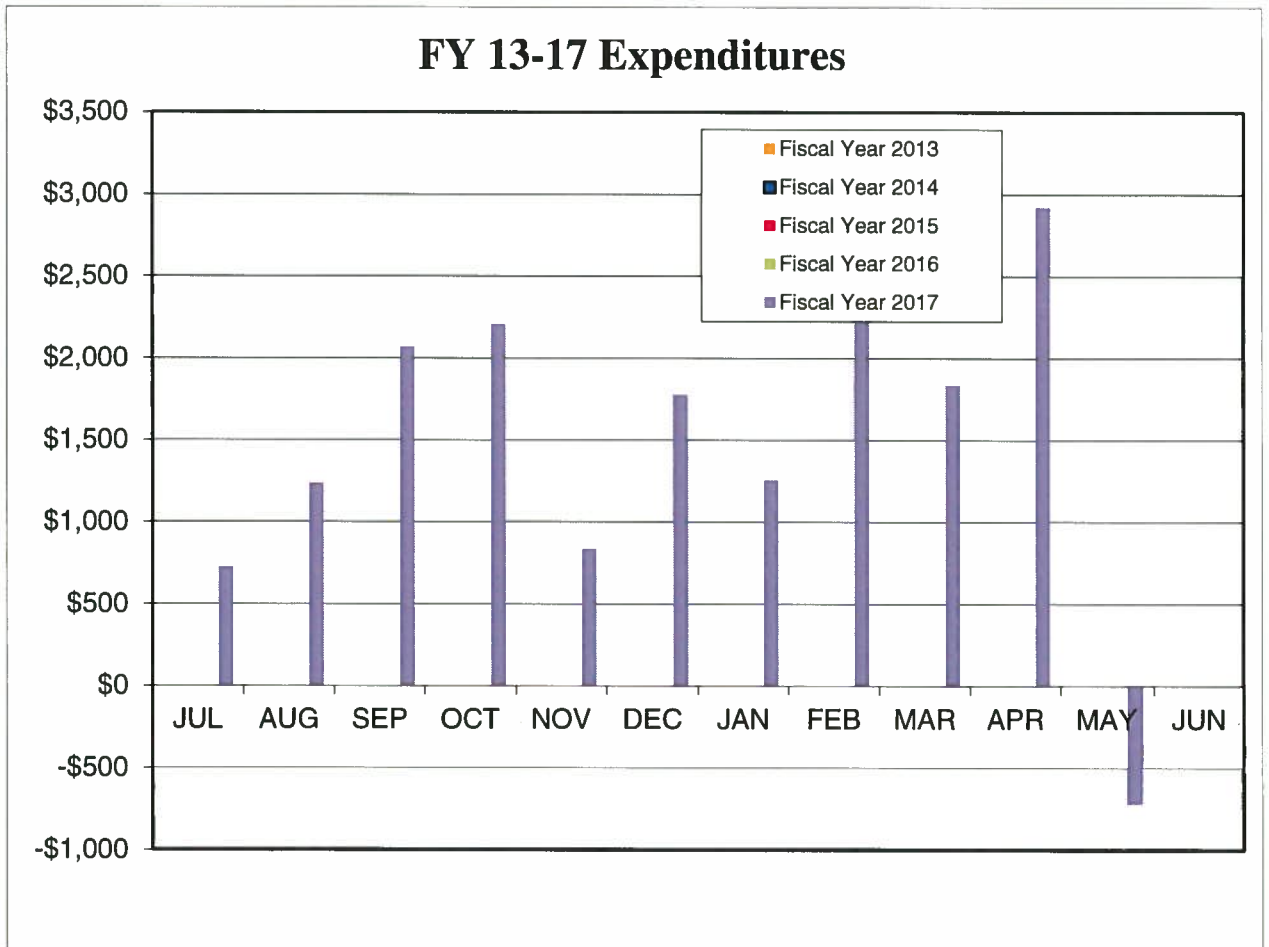
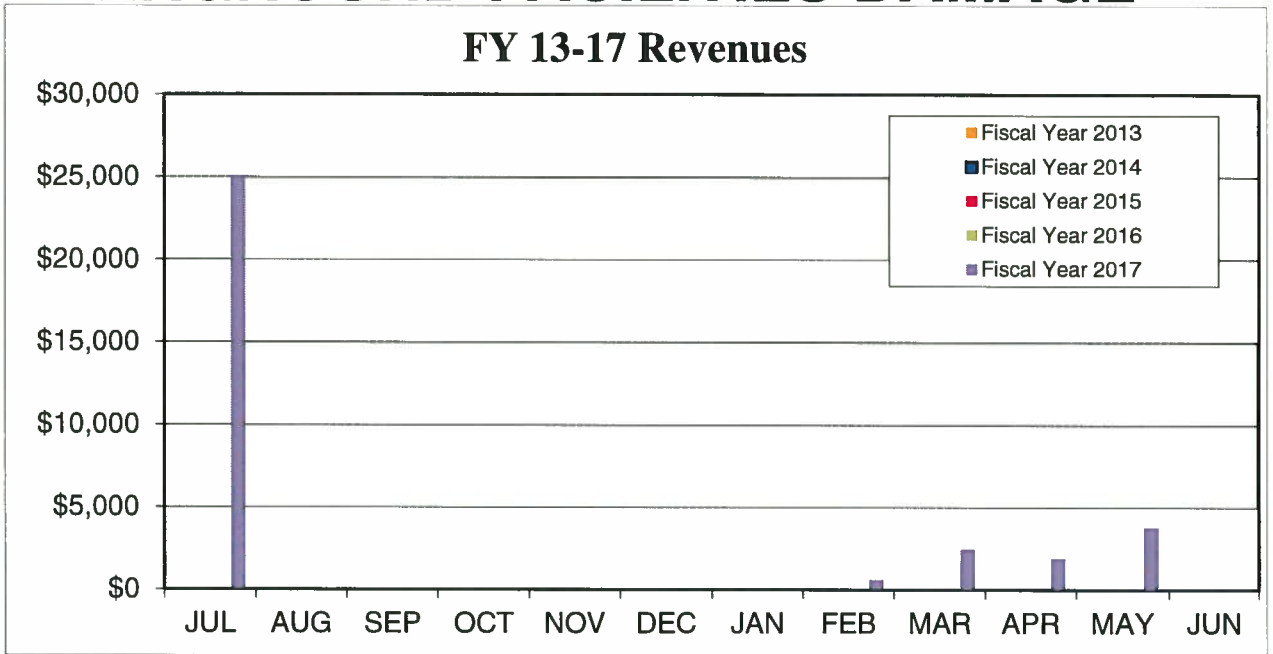
Statement of Cash Balance - 0348-00 Federal Grant (State Damage Prevention Program Grant - 2016)

July 1, 2016 Beginning Cash Available	Fiscal Year to Date Revenues	Fiscal Year to Date Expenditures and Encumbrances	Other Changes in Cash	Available Cash as of May 31, 2017	Projected Change in Cash for Remainder of Year	Projected Year End Available Cash
0	41,819	13,256	0	28,563	19,915	48,477

UNDERGROUND FACILITIES DAMAGE



UNDERGROUND FACILITIES DAMAGE



DAMAGE PREVENTION BOARD

Agenda Item No. 10b

Grant Report

PRESENTER: Chris L. Jensen, Administrator

OBJECTIVE: Update the Board on grant funds and provide an itemized list of expenditures.

ACTION: Informational

BACKGROUND: May 2017 – Deputy Administrator Ron Whitney presented the Board’s budget and deadline for grant funds. Board Member Linda Rush requested a breakdown of the Board’s spending budget.

PROCEDURAL HISTORY:

ATTACHMENTS: No documentation

