

**DAMAGE PREVENTION BOARD
VIDEOCONFERENCE MEETING**

Thursday – June 25, 2020 – 9:30 a.m. (MDT)

**Division of Building Safety
1090 East Watertower Street, Suite 150, Meridian
1250 Ironwood Drive, Suite 220, Coeur d'Alene
155 North Maple Street, Blackfoot**

MINUTES OF THE JUNE 25, 2020 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 Jeffrey Diehl called the meeting to order at 9:32 a.m. (MDT)

Board Members Present:

Jeffrey Diehl, Chairman
Jerry Piper, Vice-Chairman
Jeanna Anderson
Scott Spears
Nichole Rush
Roy Ellis
Darrin Ulmer
Julie Maki
Paul Good

DBS Staff Members Present:

Chris L. Jensen, Administrator
Spencer Holm, Deputy Attorney General
Patrick J. Grace, Regional Manager, Region 2
Adam Bowcutt, Regional Manager, Region 3
Gary Sonnen, Regional Supervisor, Region 1
Bill Hale, Damage Prevention Program Specialist
Amy Kohler, Compliance Program Specialist
Renee Bryant, Administrative Assistant 2

◆ **Open Forum**

Locating Marks – Ben Hitchcock, Das-Co, Inc., brought forth a concern that utility companies are locating one and/or two facilities within the markings of a large diamond with wings. Some diamonds can be two to three feet, while others are eight feet across (outer edge of paint mark to outer edge of paint mark). This issue has been addressed at previous Utility Coordinating Council (UCC) meetings, and the consensus has been one mark/one utility. With that much paint marks on the ground, what is the legal response for a company should damages occur within the locatable area.

Board Member Nichole Rush confirmed this issue has been discussed at UCC meetings, and the suggestion has been to take pictures, contact the utility company and explain why the markings are unreasonable.

Several board members agreed the proactive way is to take pictures (before, during and after), as well as file a complaint with DBS if the job is not reasonably marked. Damage Prevention Program Specialist Bill Hale suggested, and the Chairman agreed, to contact locating services; offering education on the law as it pertains to “reasonable accuracy” or “reasonably accurate” markings. Idaho Code 55-2205(2)(a) states, “Excavators shall have the right to receive compensation from the owner of the underground facility for costs incurred if the owner of the underground facility does not locate its facilities in accordance with this chapter.”

ACTION: The Damage Prevention Program Specialist will contact underground facility owners, and based on the law, offer to educate on how to mark locates.

Violation Fee Structure – Mr. Hitchcock voiced his opinion and concerns on the fee structure for violations by the damage prevention industry. The maximum violation fee of \$5,000 and 18-month timeframe is higher than the HVAC, electrical and plumbing boards, as theirs are a one-year probationary period and capped at \$1,000. This has been an ongoing issue. With guidance from the Board, DBS brought a triangle matrix to previous meetings. The pyramid structure assigns different maximum values to different violations. The industry is encouraged to bring solutions to the Board for review, as well as possible approval by the legislature.

◆ **Approval of the June 25, 2020 Agenda**

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

◆ **Approval of March 12, 2020 Meeting Minutes**

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

◆ **Approval of the June 8, 2020 Special Meeting Minutes**

The draft minutes in the packet are incorrect. The revised minutes were emailed to all board members and staff prior to the meeting, as well as distributed at the meeting.

MOTION: Jerry Piper made a motion to approve the revised minutes as presented at the meeting. Roy Ellis seconded. All in favor, motion carried.

◆ **Administrative Appeals Hearing**

Board Member Rush abstained from voting on Knife River and King Concrete Construction appeals.

Knife River--DAM1910-0020 – Jesse Rosin represented Knife River, Terry Harpt represented Intermountain Gas Company, Compliance Program Specialist Amy Kohler represented DBS, and Deputy Attorney General Spencer Holm was the facilitator. The Division provided Exhibits A through P. With no objections from Mr. Rosin or the Board, the Chairman approved the introduction of the exhibits into the record. All parties were sworn in and provided testimony to DAM1910-0020, violation of IDAPA 07.10.01.020.01.h *Precautions to Avoid Damage*. Mr. Rosin did not dispute the damage; however, contested the fine and asked for a lesser charge.

MOTION: Roy Ellis made a motion to reject the appeal; however, reduce the civil penalty fine to \$2,500. Jerry Piper seconded. Seven ayes and one abstained. Motion carried.

The Deputy Attorney General explained the rights of Knife River.

ACTION: Deputy Attorney General Holm will generate a Final Order on Appeal by the Board for the Chairman's signature with a signed copy to Knife River.

King Concrete Construction, LLC--DAM1912-0027 – Chris Smith represented King Concrete Construction, LLC, Cody Herrmann represented Idaho Power, Compliance Program Specialist Amy Kohler represented DBS, and Deputy Attorney General Spencer Holm was the facilitator. The Division provided Exhibits A through L. With no objections from Mr. Smith or the Board, the Chairman approved the introduction of the exhibits into the record. All parties were sworn in and provided testimony to DAM1912-0027, violation of IDAPA 07.10.01.020.01.h *Precautions to Avoid Damage*. Mr. Smith did not dispute the damage; however, contested the fine and asked for a lesser charge. Ms. Kohler suggested, and the Chairman agreed, that moving forward a fee schedule be included in correspondence from DBS for each appeal. Upon further discussion about the fee schedule, the Division brought forth the Case NOV Violation Report on King Concrete Construction, entering it as Exhibit Q.

ACTION: The Compliance Program Specialist will include a fee schedule with the Division's future correspondence on alleged violations/appeals.

MOTION: Roy Ellis made a motion to reject the appeal and recommended the civil penalty be reduced to \$1,000. Hearing no second, the motion died.

MOTION: Scott Spears made a motion to reject the appeal and reduce the fine to \$3,000. Julie Maki seconded. Four ayes, three nays, and one abstained. Motion carried.

The Deputy Attorney General explained the rights of King Concrete Construction, LLC.

ACTION: Deputy Attorney General Holm will generate a Final Order on Appeal by the Board for the Chairman's signature with a signed copy to King Concrete Construction, LLC.

◆ **Elect a Chairman-Elect**

Currently, Jeffrey Diehl is the chairman and Jerry Piper the vice-chairman. Chairman Diehl is not seeking reappointment when his term expires July 1, 2020; therefore, an election of officers is required.

Chairman

NOMINATION: Nichole Rush nominated Jerry Piper for chairman. Roy Ellis seconded. All in favor, motion carried.

Vice-Chairman

NOMINATION: Jeanna Anderson nominated Bob Chandler for vice-chairman. Jerry Piper seconded. All in favor, motion carried.

To complete his term as chairman, Mr. Diehl conducted the remainder of the meeting.

◆ **Appeals**

Following the tier of the fee structure, Regional Manager Patrick Grace suggested having future discussion to allow the Division the ability to negotiate cases before they get to the Board. Although DBS operates the constraints of the Board, as a due process, Chairman Diehl expressed it is appropriate for appeals to continue to come before the Board.

◆ **Statute Review Subcommittee**

Board Member Rush brought forth an idea to create a Statute Review Subcommittee to identify chapters and/or paragraphs of the damage prevention law that are vague and need clarification. The current issue is emergency locates.

When asked, board members can participate; however, there can be no quorum. There are no restrictions on the number of stakeholders. Through a motion, the Board can establish a subcommittee. The Chairman can then appoint board members and industry-related individuals. Board Member Rush offered to be the interim subcommittee chairperson to get the subcommittee started and identify numbers. Once established she would shift to a member of the subcommittee.

MOTION: Jerry Piper made a motion the Board accept Nichole Rush's suggestion to create a subcommittee to review statutes as needed for changes, and their purview would be to review statutes in sections, as well as take industry feedback and experience to determine if there needs to be any improvements. The number of seats on the subcommittee would be limited to seven, not to exceed three board members. Roy Ellis seconded. All in favor, motion carried.

Although the motion states seven individuals, if more are needed, they can be added as the Board directs.

◆ **Financial Update**

Board Member Rush deferred this topic to Damage Prevention Program Specialist Bill Hale, which in turn addressed the financial report through April 2020. When asked, the \$65,000 fee allocated by the Board for advertisement on billboards is part of the \$187,000 projected expenses, which has not been spent. With the new fiscal year beginning July 1st, the funds are still there; however, DBS will have to go back to the Division of Financial Management for spending authority. The Board has been awarded \$100,000 from the PHMSA grant. The Division received \$50,000 in January 2020 and is closely watching and waiting for the second half of the grant; which was projected in April 2020. Mr. Hale was asked to follow-up with Deputy Administrator Ron Whitney to see if he has heard anything.

ACTION: The Damage Prevention Program Specialist will discuss with the Deputy Administrator whether he has received a date in which the Division will receive the second half, \$50,000, of the PHMSA grant.

The projected budget for Fiscal Year 2022 is due September 1, 2020.

◆ **Damage Prevention Training Report**

Training – On-line training is still available; however, in-person training stopped in April due to the Covid-19 virus. Damage Prevention Program Specialist Hale is awaiting approval from the Administrator to begin training again. Currently, parts of Idaho are in stage three of the Governor's Stay Healthy Guidelines; which, allows for gatherings, public and private, from ten to 50 people with appropriate physical distancing and precautionary measures being observed.

Correspondence – The Division has sent approximately 300 emails to contractors; reminding them to call 811, as well as the five steps of digging.

Billboards – DBS attended a Request for Proposal (RFP) Pre-Proposal Conference meeting as it pertains to advertising. If approached by a vender, refer them to the Division’s purchasing officer. The contract with an advertising agency for the billboard campaign should be available in September 2020. Damage Prevention Program Specialist Hale contacted the Idaho Transportation Department; asking to use their reader boards on interstates throughout the state of Idaho.

Chairman Diehl reminded the Damage Prevention Program Specialist to be conscientious of the major type of damages occurring and provide training accordingly.

Agriculture – The Board was asked by Mr. Hale if he should pursue the agricultural trade. Some states are working with the universities and extension agencies; trying to get the word out to the agricultural community. There are several large farms in eastern Idaho that are having serious challenges with getting power located to pivots. There is a small section on the DIRT report for agriculture. Administrator Chris Jensen recommended working with Lynn Tominaga as he is the Executive Director of the Idaho Ground Water Association in Idaho.

◆ **Education and Training (E&T) Subcommittee Update**

Billboards – This topic was addressed under the Damage Prevention Training Report.

New Chairperson – Board Member Jerry Piper is the newly elected Chairman of the Damage Prevention Board. Therefore, Mr. Piper stepped down as the Chairman on the E&T Subcommittee; asking Chairman Diehl to delegate Board Member Julie Maki to chair the subcommittee.

◆ **Compliance Report**

NOV Report – There is not a lot to report since the last board meeting, especially with the Covid-19 pandemic. With the changes made to the complaint form, DBS continues to see more thorough reports.

2019 DIRT Report – As requested at the March 2020 Damage Prevention Board meeting, the 2018 and 2019 DIRT reports were included in the board packet. There were approximately 1,200 damages reported on the DIRT reporting tool in 2019.

DPB Stats Report – The report from 1/1/2020 to 6/17/202 was included in the packet. There were civil penalty questions pertaining to the 2019 DPB Stats report. Normally the previous year’s report is included with the current report; however, there was an oversight. For 2019, there are a fair amount of civil penalty fees outstanding, as well as a handful in collections. The Compliance Program Specialist offered to email the 2019 report to the board members.

ACTION: The 2019 DPB Stats report will be emailed to the Board by the Compliance Program Specialist.

◆ **Administrator Report**

Changes – In an effort to consolidate/streamline the construction industry and licensees in the state of Idaho, Governor Little recently changed the structure of his executive branch. Creating a one-stop shop for licenses, DBS is now under the Division of Occupational and Professional Licenses.

Construction – Again, construction is booming throughout the state of Idaho. The Division’s permits are up in number from last year, with last year being a record year.

Testing – As to not stop or delay individuals from getting their licenses, the Division has reopened testing.

Recognition – Administrator Jensen thanked Chairman Diehl for his dedication and service on the Board.

Meetings – Having today’s meeting, the consensus of the Board is to forego the July 16, 2020 meeting; reconvening on September 24, 2020, which is the next regularly scheduled meeting.

◆ **Adjournment**

Chairman Diehl adjourned the meeting at 2:00 p.m.

BOB CHANDLER, VICE-CHAIRMAN
DAMAGE PREVENTION BOARD

RON WHITNEY, ADMINISTRATOR
DIVISION OF BUILDING SAFETY

DATE

DATE

09/16/2020rb