

IDAHO DAMAGE PREVENTION BOARD
VIDEOCONFERENCE MEETING

Thursday, January 26, 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 JANUARY 26, 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 9:30 a.m. (MT)

Board Members Present:

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

DBS Staff Members Present:

Chris Jensen, Administrator
Ron Whitney, Deputy Administrator
Patrick Grace, Deputy Attorney General
Jeff Egan, Regional Manager, Region 3
Shelly Farris, Regional Supervisor, 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, Vaughn Rasmussen absent. Quorum established. Chairman Van Slyke welcomed those in the audience and called for introductions, Wayne Hammon and Richie Bonney with the Association of General Contractors (AGC). The Chairman also acknowledged Verlyn Bailey with TransCanada, attending via teleconference.

◆ **Open Forum**

No issues were brought forward during open forum.

- ◆ **Approval of the January 26, 2017 Agenda**
The Chairman called for the approval of the agenda.

MOTION: Jerry Piper made a motion to approve the agenda, motion seconded by Bob Chandler. Vote called, all in favor, motion carried.

- ◆ **Approval of the November 10, 2016 Board Meeting Minutes**
The Chairman called for the approval of the draft minutes.

MOTION: Jerry Piper made a motion to approve the November 10, 2016 Board Meeting Minutes as presented. Bob Chandler seconded. Vote called, all in favor, motion carried.

- ◆ **PHMSA Notice and Appeal**
Joe Leckie requested this agenda item be delayed until after the informational PHMSA presentation, agenda item #6, he offered it would flow better.

- ◆ **Subcommittee Reports**

Scott Spears was chairman for subcommittee #3, which was tasked with the responsibility of drafting a rule defining the procedure for processing of claims related to damages to underground facilities. A draft of the “Damage Prevention Complaint Form” was included in the board packet. Patrick Grace (DAG) discussed considerations that were taken into account with the design of the complaint form. The DAG clarified the complaint process is more of a disciplinary process, wherein a party violates the act and consequences could be imposed, such as a training or a civil penalty. Discussion continued on whether it was the intent of the legislation to have the Board adjudicate claims. The DAG conferred with Neil Colwell on the intent of the term “claim” and Neil advised, initially, it was the desire for the Damage Prevention Board to adjudicate claims, however, that was later changed. Discussion continued. Reporting is not the same thing as a complaint, may not require action. A complaint is where damages are incurred and parties want corrective action. The DAG noted the wording on the draft form, “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.” Discussion ensued on what will happen once the complaint is received. Chairman Van Slyke asked Scott if he was seeking feedback from the Board, Scott confirmed the committee would welcome any input with defining this process.

Questions were directed to DBS on how complaints were currently managed. The DAG advised the Division has received complaints however, resolution cannot occur without rules in place. Discussion held on a temporary rule for the process, the timeline for a temporary

rule would probably be the fall at the soonest. Urgency to expedite the process was expressed.

Chairman Van Slyke inquired whether DBS could begin action with notification to homeowners. Ron Whitney expressed DBS does not have funding to proceed with this action, the Board would need to provide DBS with the letter format for homeowners, and supporting literature. Discussion on the creation of informational material, before you dig. Linda Phillips advised the literature and handout materials would need to be created. Jeffrey Diehl noted the development of the material shouldn't require much effort with existing information available that can be updated. The DAG offered to create the notice to homeowners' letter, with statutory reference included, for the Board. The draft letter will be presented to the Board at the March meeting. Bob Chandler suggested the letter be drafted for a broader audience than just homeowners, to serve as general information for dissemination.

Subcommittee #1, chaired by Vaughn Rasmussen and tasked with the creation of training programs on all pertinent underground damage prevention topics. Chairman Van Slyke reported Vaughn was absent and the report would be presented at the March meeting for subcommittee #1. Linda Phillips provided information on her research of existing training materials with surrounding states, Oregon, Nevada, Colorado, Wyoming, Montana and California. Upon review, the primary training course on the website was often handbooks with statute information included/attached, many had organized excavator meetings throughout the state which have proven to be very effective, and one-call websites were very informational and included; forms, submit a locate, additional information for homeowners and property owners. Videos and excavator safety videos are available, over 25 videos to select. These videos are available through *Underground Focus*, a magazine that has been around for over 25 years and offers safety videos and other training materials, but Linda was not able to find any materials on penalties. The committee also discussed conducting a survey with stakeholders and excavators on what training materials they may use and how effective, the frequency of training, and the preferred topics. Chairman Van Slyke also made contact with the pipeline operators and the line locate contractors of Idaho to determine what they offered, in-house they have training material. The message coming back is for the industry to have a common training database.

Subcommittee #2, chaired by Joe Leckie and tasked with the establishment of, by administrative rule, the fines for penalties issued on violations of this chapter. Joe sent out a survey to the western states to determine if their state had a fining schedule and the factors that would mitigate or escalate fine amounts. Joe has received some of the surveys back, but will have more in the next couple of weeks and will be prepared to report at the March meeting.

Verlyn Bailey, with TransCanada of Washington, shared Washington utilizes the National Utility Contractors Association (NUCA) training for contractors that violate the one-call statutes. Verlyn shared the Washington fine structure is up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation, the fine can be reduced with attendance of training within 6 months of violation. A stipulation is also imposed on the contractor, cannot receive another violation within a year of the initial violation. Verlyn referenced Montana's fee structure, a proposed fine of \$50 for homeowners and \$100 for contractors, but Verlyn expressed concern with obtaining PHMSA's approval with a fine structure that is so low, he doesn't believe PHMSA will take it seriously.

Patrick inquired with Verlyn if there was a fine schedule that determines the penalty for a specific violation, or if the fee is determined on a case-by-case basis. Verlyn confirmed the process is a case-by-case basis. A panel of five reviews the matter and makes a recommendation to the UTC for their ruling.

- ◆ **Virtual DIRT Report Expert – Steven Blaney, DIRT Program Manager, New York**
Steve Blaney with New York Virtual DIRT (CGA) provided an overview of the adaptation process of the virtual DIRT report for your state's data collection needs with flex fields. Steve explained the DIRT reports do not capture the state's flex fields, only the CGA DIRT fields. VPD is Virtual Private Dirt that is customized to your state's needs. VPD is a custom version of DIRT. Discussion on the compatibility of data with the DIRT report format. The report format must have equal number of fields that correspond to the DIRT report format.

Steve qualified you do not have to be a CGA member to participate in DIRT or to have VPD. Demonstration of the registration process for contractors to enter their data into VPD, no cost is associated with this registration. The Division of Building Safety would be the host for VPD. There is a \$500 initial set-up fee, if you are not a member of CGA, and \$500 maintenance fee annually. VPD provides for personalization with the administrative entity's logo on the home VPD page.

Chairman Van Slyke qualified the State of Idaho has to provide a method to track damages to document progress with reduction of damages. Discussion continued on the best method to collect data for the State of Idaho. Chairman Van Slyke asked the Board if VPD was the best option for Idaho. Linda Phillips supported this is the program utilized by the pipeline industry and believes this is the vehicle for Idaho to use. Discussion on the ability to produce statistical information from the data collected within VPD from downloadable files. Caria Nakano discussed the statistical program DBS utilizes that can analyze the data collected.

Ron Whitney inquired how the Board would get the contractors to comply with the requirement to enter the data. Nichole Rush referenced the requirement to report damage information in the Damage Prevention statutes, §55-2208(5). Discussion on duplication of information; contractor/facility. Patrick Grace recommended the Board might want to revisit the wording in the statute to clarify the reporting requirement. Chairman Van Slyke asked the question if the program was only tracking damages. The statute states damages or excavator downtime. Discussion continued.

Chairman Van Slyke stated VPD appeared to be the appropriate direction for the Board to proceed. Ron Whitney broached the subject of funding for the program and registration costs. Caria Nakano advised grant monies have been received and funds were allocated for the reporting tool. Caria reported \$41,818.75 of the grant monies were received on Monday, January 23, 2017. Chairman Van Slyke directed the acquisition of the VPD reporting tool be an action item on the March 23, 2017 Damage Prevention Board Meeting.

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

Joe Leckie provided the Board with the background and history of PHMSA. The Pipeline and Hazardous Materials Safety Administration (PHMSA) was authorized by congress as a regulatory authority over pipelines that transport hazardous hydrocarbon liquids and gases. They are subject to reauthorization every four years, the latest reauthorization act occurred in 2016. PHMSA is part of the Department of Transportation and is tasked with oversight of the pipeline system within the United States, and the territorial waters, to insure the pipelines are constructed and operated safely, limited to pipelines that transport hazardous materials. PHMSA inspects the interstate pipelines and the states' programs inspect the intrastate pipelines. Each state is encouraged to have their own pipeline safety inspection program which PHMSA provides assistance with funding and grant programs up to 80% of the program, normally funding about 60% of the cost of the program. Idaho has a state program that is part of the Public Utilities Commission with Joe Leckie as the state program manager. It was generally thought that pipelines were the greater risk for damages, however, in 2000 Common Ground Alliance (CGA) was formed to look beyond pipelines and brought together all underground utility/facility owners with the general purpose to extract best practices. At this time, the one-call centers were formed. In 2006, congress didn't think enough progress was being made, gave PHMSA responsibility and authority to increase enforcement of one-call service violations, and specifically defined what an adequate damage prevention program would include, and authorized PHMSA to pursue civil action and penalties against excavators and operators who caused damage in a state where there was an inadequate system for damage prevention. Congress defined nine elements of an adequate program: effective communication, comprehensive stakeholder support, operator internal performance measures, effective employee training, public education, dispute resolution, enforcement, technology, and damage prevention program review. With this definition, congress tasked

PHMSA with the responsibility to disseminate the damage prevention mission throughout the United States. In 2011, a survey was sent out relating to the nine elements of an adequate program. As a result of the survey, operators and stakeholders organized the coalition to amend the damage prevention law in Idaho.

PHMSA has authority of all underground facilities related to damage prevention. This statement prompted a request for clarification, as this was not general information to the Board. Joe identified other players involved, some governmental, others non-governmental, under PHMSA: Common Ground Alliance (CGA), American Controlling Institute, American Gas Association, Interstate Natural Gas Association of America, engineering societies, NACE (corrosion experts), public interest groups, environmental groups, and a non-profit organization, Pipeline Safety Trust.

- ◆ **PHMSA Notice and Appeal (Continued)**

PHMSA evaluated the Idaho program in June 2016 to make a determination whether the program was adequate or inadequate. On the basis of this review, Idaho received notification in December 2016 the damage prevention program was inadequate. One of the questions as part of the PHMSA review was; in the previous calendar year did the enforcement organization assess civil penalties, and/or other sanctions for violation of the excavation damage prevention law? If the answer was no, enforcement of the damage prevention law was determined inadequate. This resulted in the inadequate determination of Idaho's program. Discussion continued.

PHMSA wants the damage prevention program to work on a state level and encourage states to be the major enforcer. Grant opportunities have been made available to states; state damage prevention grant for \$50,000, and a one-call grant to promote damage prevention including changes in the underground damage prevention laws, related compliance activities, training, and public education with a maximum award of \$45,000 per year. Idaho has already taken advantage of one of the grant opportunities that afforded the Damage Prevention Board the first installment of \$41,818.75 as Caria reported. Joe explained, initially, states were ineligible to apply for grants if their program was deemed inadequate, however PHMSA has agreed to waive ineligibility if the state is moving toward adequacy within the program. Joe cited concern for Idaho's program in the area of penalties, currently the program is at \$5,000 for second offense and after that \$10,000. PHMSA's recommendation is \$2.5 million for maximum penalty for single occurrence and after that \$200 million for total of single occurrence and want states to move to these amounts. Joe does not believe these amounts will work for Idaho, and PHMSA may tell us the penalties are too low or inadequate. In the possibility that a bad accident occurred, related to a damage prevention violation, and the results are so catastrophic that Idaho's maximum fines appear inadequate, PHMSA could step in and overlay or replace Idaho's fine. Currently Idaho's law

has exemptions; PHMSA declared no exemptions would be allowed however, PHMSA has backed off that declaration. Discussion continued on exemption scenarios allowed.

Another review of Idaho's program will occur in 2017. Joe is concerned Idaho will be far enough along with the new statute to satisfy the areas noted inadequate. Upon review of other states' ratings, about half of the states have been rated as inadequate, so Idaho is not alone. Joe advised Idaho could appeal this rating, however, he doesn't know if that would benefit Idaho to appeal due to the lack of issuance of civil penalties. There is a five-year period (2021) before PHMSA has committed to step in and take over. Any kind of enforcement action by the Damage Prevention Board will satisfy PHMSA with the damage prevention enforcement program. Chairman Van Slyke inquired with Joe Leckie when PHMSA would be back for the next evaluation. In 2017, and will meet with the Board. Joe emphasized PHMSA will not meet with the PUC or DBS, it will meet with the Board! Joe acknowledged the Idaho program was evaluated on the previous law. Discussion continued on timelines to get before the 2018 legislative session. Questions arose on the need to provide negotiated rulemaking notice for the Damage Prevention Board. The DAG will prepare the necessary paperwork to announce the negotiated rulemaking process for the Board. Chairman Van Slyke inquired if it was the desire of the Board to take action on PHMSA's inadequate rating of Idaho's damage prevention enforcement program.

MOTION: Jerry Piper made a motion the Board not take action with an appeal on the PHMSA notice, motion seconded by Jeffery Diehl. Vote called, all in favor, motion carried.

ACTION: The Damage Prevention Board will not file an appeal on the PHMSA inadequate rating of Idaho's damage prevention enforcement program.

♦ **Management of Complaints Pending Defined Process**

Chairman Van Slyke stated there have been many conversations relating to the complaint process and represented this conversation had been exhausted and recommended the Board move on to another discussion relative to §55-2209. Verlyn Bailey with TransCanada inquired whether the Board would address the notification process to the entities that issue excavation and building permits of the existence of this chapter and the one-number notification service. The Chairman inquired if a form letter advising the appropriate entities of the need to move forward with the notification of the newly established statutes could be mailed to the permit entities by DBS. Ron Whitney advised DBS has contact information for the entities that issue permits. Administrator Jensen recommended the Board provide a draft letter for DBS to disseminate. DBS will get the information out once the letter has been drafted.

◆ **Damage Prevention Board Webpage Design and Development**

Ron Whitney referenced grant monies available for funding the design, development and construction of the Damage Prevention Board website. The grant also allocates DBS staffing for this project. The State of Idaho has a prescribed format that will be used as a template for the Damage Prevention Board webpage. Chairman Van Slyke requested volunteers to assist DBS with this project; Linda Phillips and Bob Chandler have agreed to lend their talents to this project.

◆ **Administrator Report**

Chris Jensen emphasized the importance with following the negotiated rulemaking process. Discussion on the target group of interested parties for the negotiated rulemaking notice. Linda Phillips has contact information and Joe Leckie encouraged DBS to contact Neil Colwell for the coalition distribution group.

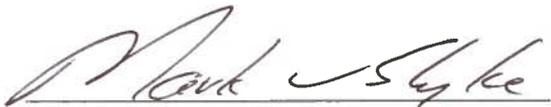
Financial Report

Financial information presented in the packet reviewed, grant monies assist with expenses incurred up until now for meeting expenses, travel reimbursements, and operating costs. Clarification on whether the grant afforded costs for production of informational materials. Caria noted these expenses were included in the grant application, but was unclear whether the monies would be available in the first grant installment, might have to wait until the second installment.

◆ **Adjournment**

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

The meeting adjourned at 2:28 p.m. (MT)



MARK VAN SLYKE, CHAIRMAN
IDAHO DAMAGE PREVENTION BOARD



CHRIS L. JENSEN, ADMINISTRATOR
DIVISION OF BUILDING SAFETY

3-23-2017
DATE

3-28-17
DATE

*These DRAFT minutes are subject to possible correction and final approval by the Idaho Damage Prevention Board. 3/13/17llj