

**DAMAGE PREVENTION BOARD
VIDEOCONFERENCE MEETING**

Thursday – July 26, 2018 – 9:30 a.m. (MDT)

**Division of Building Safety
1090 East Watertower Street, Suite 150, Meridian
1250 Ironwood Drive, Suite 220, Coeur d'Alene
2055 Garrett Way, Building 1, Suite 4, Pocatello**

MINUTES OF THE JULY 26, 2018 MEETING

NOTE: The following report is not a verbatim transcript of the discussions at the meeting; however, it is intended to record the significant features of those discussions.

Chairman Mark Van Slyke called the meeting to order at 9:30 a.m. (MDT)

Board Members Present:

Mark Van Slyke, Chairman
Jerry Piper
Joe Leckie
Jeanna Anderson
Bob Chandler
Jeffrey Diehl
Scott Spears
Julie Maki

DBS Staff Members Present:

Ron Whitney, Deputy Administrator
Spencer Holm, Deputy Attorney General
Patrick J. Grace, Regional Manager, Region 2
Jerry Peterson, Energy Program Manager
Amy Kohler, Compliance Program Specialist
Renee Bryant, Administrative Assistant 2

◆ **Welcome**

Julie Maki, One Number Notification Representative, was welcomed as the newest board member.

◆ **Acknowledgement**

Congratulations to Board Members Jeanna Anderson and Roy Ellis on their reappointments to the Board.

◆ **Open Forum**

There were no new issues to address.

◆ **Approval of the July 26, 2018 Agenda**

MOTION: Jeffrey Diehl made a motion to approve the agenda as presented. Joe Leckie seconded. All in favor, motion carried.

◆ **Approval of the May 24, 2018 Board Meeting Minutes**

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

◆ **Administrative Appeal Hearing**

Titanium Excavation--DAM1803-0026 – Steve Vandermeer represented Titanium Excavation, Compliance Program Specialist Amy Kohler represented DBS, Terry Harpt represented Intermountain Gas, and Deputy Attorney General Spencer Holm was the facilitator. The Board did not object to the introduction of Exhibits A through K (DBS), and 1 through 3 (Titanium Excavation) into the record. All parties were sworn in and provided testimony to DAM1803-0026, violation of IDAPA 07.10.01.020.01.c *One Number Notification to Facility Owner*.

MOTION: Mark Van Slyke made a motion to accept the recommendation of DBS to impose the civil penalty as outlined. Julie Maki seconded. Two ayes and six nays, motion did not pass.

MOTION: Joe Leckie made a motion to reject the civil penalty. Bob Chandler seconded. Six ayes and two nays, motion passed.

The Deputy Attorney General explained the rights of Titanium Excavation, and the Division will refund the civil penalty fee.

ACTION: The Deputy Attorney General will generate a Final Order on Appeal for the Chairman’s signature, and provide a signed copy to Titanium Excavation.

King Concrete Construction, LLC--DAM1806-0008 – Dave McCarty represented King Concrete Construction, LLC, Compliance Program Specialist Amy Kohler represented DBS, Terry Harpt represented Intermountain Gas, and Deputy Attorney General Spencer Holm was the facilitator. The Board did not object to the introduction of Exhibits A through K (DBS), and 1 through 6 (King Concrete Construction, LLC), into the record. All parties were sworn in and provided testimony to DAM1806-0008, violation of IDAPA 07.10.01.020.01.h *Precautions to Avoid Damage*.

MOTION: Mark Van Slyke made a motion to accept the recommendation of DBS to impose the civil penalty as outlined. Jeffrey Diehl seconded. All in favor, motion carried.

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

ACTION: The Deputy Attorney General will generate a Final Order on Appeal for the Chairman’s signature, and provide a signed copy to King Concrete Construction, LLC.

◆ **2019 Proposed Legislation**

Definitions--§ 55-2202 – Moved from rule to statute were the definitions “Hand Digging” and “Soft Digging”, as well as a new definition of “Locator” added to statute.

MOTION: Jerry Piper made a motion to approve the proposed changes in Idaho Code § 55-2202 Definitions. Joe Leckie seconded. All in favor, motion carried.

There are independent locators used by others beyond facility owners. Board Member Jeffrey Diehl suggested the following alternative language, “Locator means a person designating the location of underground facility owned or operated by underground facilities.” Another suggest was to change the word “designating” to “identifying” since “Locator” means a person identifying the location.

AMENDED MOTION: Jeffrey Diehl amended the motion to modify the definition of “Locator”. Jerry Piper seconded. All in favor, motion carried.

Division Imposition--§ 55-2211 – The Division to impose training and civil penalties with the Board having the authority to reject, affirm, increase or decrease the fines. The new paragraph in subsection one (1) in essence recapitulates the standard already in place regarding multiple violations. Board Member Diehl suggested adding the verbiage “within the statute limitations” to the end of the first sentence and removing the second sentence in its entirety.

MOTION: Jeffrey Diehl made a motion to accept, with modifications, the proposed statute changes. Joe Leckie seconded. All in favor, motion carried.

Double Reporting--§ 55-2208(5) – Eliminating the potential for double reporting incidences, the proposal separates out the obligations of the owner to report damages to an underground facility and the excavator to report downtime.

MOTION: Joe Leckie made a motion to accept the proposed changes in Idaho Code § 55-2208(5) on double reporting. Jeffrey Diehl seconded. All in favor, motion carried.

Identified but Unlocatable Underground Facilities--§ 55-2205 – To clarify the obligation of the owner, agent, and locator to identify unlocatable underground facilities within 24 inches, the verbiage, “...with reasonable accuracy as defined in section 55-2202(15), Idaho Code...”, was relocated in subsection two (2). In subsection four (4), the language “section 55-2205(2), Idaho Code/required under section 55-2205(2), Idaho Code” replaces “reasonable accuracy/reasonably accurate”.

MOTION: Jeffrey Diehl made a motion to accept the proposal as presented. Bob Chandler seconded. All in favor, motion carried.

Right to Appeal Training--§ 55-2211 – Added language in statute would recognize training as a disciplinary action.

MOTION: Scott Spears made a motion to accept the proposal. Jeffrey Diehl seconded. All in favor, motion carried.

Service Laterals--§55-2202 – Definitions were enhanced, assigning clear responsibility to the party accountable for locating wet utility service laterals. An individual who is exclusively an end user is not responsible for marking service laterals.

It was determined the language in subsection three (3) should read, “End users shall not be required to locate or mark any service lateral. Underground facility owners shall locate and mark service laterals in accordance with section 55-2205(2), Idaho Code.” since everything else is outlined in the definitions.

MOTION: Bob Chandler made a motion to approve the proposal with amendments. Jerry Piper seconded. All in favor, motion carried.

Subsequent Violations--§ 55-2211 – The proposed statute change clarifies the amount of a civil penalty for a subsequent violation within 18-months from an earlier violation. If there are no damages to a facility, the civil penalty is not to exceed \$1,000; however, if there are damages to a facility, the civil penalty is not more than \$5,000 for each separate violation.

MOTION: Jerry Piper made a motion to accept the proposal as written. Joe Leckie seconded. All in favor, motion carried.

◆ **Recognition**

Chairman Van Slyke recognized Linda Phillips with a commemorative plaque for her many years of service as an advocate for the industry and member of the Damage Prevention Board.

◆ **PUBLIC HEARING--Negotiated Rulemaking**

If approved, the following rule amendments will go before the 2019 legislature.

IDAPA 07.10.01.008.02 & .03--Replace “Utility Owner” with “Facility Owner” – To broaden the rule, the proposal replaces “utility owner” with “facility owner”.

MOTION: Bob Chandler made a motion to approve the proposal as presented. Scott Spears seconded. All in favor, motion carried.

IDAPA 07.10.01.003--Require Payment of an Appeal Bond – For years, the standard for an appeal before the Electrical, HVAC or Plumbing Boards has been for alleged violators to include the amount of the civil penalty with their appeal request.

To follow suit, the Board requested the Division make the following revisions to the draft rule: 1) Party imposed with training or civil penalty to pay a \$200 appeal bond to request a hearing, 2) Bond refunded if the alleged violator prevails, 3) Bond applied to penalty fee if civil penalty is upheld, and 4) Training appeal, bond refunded if the defendant appears at the hearing.

MOTION: Jeffrey Diehl made a motion to accept the proposed rule with modifications. Scott Spears seconded. All in favor, motion carried.

IDAPA 07.10.01.020.01--Make Locators Eligible for Civil Penalties – The proposal includes locators as stakeholders who could be subject to a civil penalty or discipline for failure to locate or mark underground facilities. As noted, the new definition of “Locator” in rule would mirror the definition in statute.

Bryan Rich, Vice-President of Operations, ELM Utility, provided a brief history of the company, as well as offered facts on what the company would be up against should the rule pass.

Harley Hartman, Senior Vice-President of Operations, ELM Utility, asked the Board to consider reviewing the processes of other states with regard to penalties.

MOTION: Jerry Piper made a motion to accept the proposal with changes to the definition. Jeffrey Diehl seconded. All in favor, motion carried.

◆ **Financial Subcommittee**

There have been several discussions of creating a financial subcommittee to work with DBS on managing the finances. A suggestion was for Board Member Nichole Rush to be the chairperson.

MOTION: Mark Van Slyke made a motion to approve the financial subcommittee. Jeffrey Diehl seconded. All in favor, motion carried.

Chairman Van Slyke recommended the subcommittee be comprised of three board members. Board Member Maki volunteered, as well as Chairman Van Slyke. Board Member Jerry Piper offered if Board Member Rush does not want to be on the subcommittee.

◆ **Virtual Dirt—Update**

The DIRT Subcommittee recommended the following: 1) Dissolve the subcommittee since the objective has been met, 2) In rule, require DIRT reporting be quarterly with no more than one quarter in the rear, and 3) Refresh communication with cities and counties by outlining requirements to participate in 811 and the damage prevention standards.

MOTION: Jeffrey Diehl made a motion to accept the three action items presented by the DIRT Subcommittee. Jeanna Anderson seconded. All in favor, motion carried.

◆ **Education and Training (E&T) Updates**

Training Programs--Update – Jerry Peterson, Energy Program Manager, is working on a one-hour online interactive program as another source of training. Upon completion, the E&T Committee will review the course.

811 Tri-Fold Flyer – The Division has created a flyer for homeowners on the guidelines for safe digging, training, and private lines. Contractors can add their company name/logo to the front of the flyer for distribution to their clients.

Cost for Future Training – A member of the Utility Coordinating Council (UCC) asked the Energy Program Manager to provide direct support to UCC's regional meetings. Although always welcome to do so at no cost, Mr. Peterson asked the Board if this should be part of its budgetary process. At this point, it is not the responsibility of the Board.

2018 Fiscal Year-End Training Report – From February 20, 2018 through June 30, 2018, Mr. Peterson provided 19 training sessions with 535 participants.

Complaint Form Tutorial – The Division has received a multitude of incorrect and/or incomplete complaint forms from contractors against utility companies. To assist in correctly completing the form, a tutorial is available on the Guidelines & Forms page of the Board's website.

Idaho's Guide to Safe Digging Manual – Recently, DBS ordered 5,000 manuals. A Safe Digging Guide Request form is available on the Guidelines & Forms page of the Board's website for anyone wanting ten or more manuals. In addition, the manual is available on the Board's website, and at the Division's satellite offices.

Advertising – Mentioned were the costs of TV/radio advertising with KBOI from June 2018 through January 2019.

E&T Financial – Distributed, and discussed, were spreadsheets for Fiscal Years 2018 and 2019; projecting revenue and expenses on grants, advertising, donations, etc., as it pertains to training and education.

E&T Subcommittee Changes – With the retirement of Linda Phillips, Board Member Maki offered to be on the E&T Subcommittee with Chairman Van Slyke, Vice-Chairman Vaughn Rasmussen, and Board Member Anderson.

◆ **PHMSA Report**

In May 2018, the Chairman received PHMSA’s report, finding Idaho to have inadequate enforcement during the PHMSA evaluation conducted in 2016. A copy of the report was included in the board packet.

◆ **E-TRAKiT System**

Compliance Program Specialist Kohler demonstrated how individuals are able to access complaint information from the Division’s E-TRAKiT system. For ease of locating a complaint, the Compliance Program Specialist is working with the Division’s Webmaster to generate a link on the Board’s website from E-TRAKiT, titled “Search Violations”. DBS will provide supporting documentation on a case to interested parties upon receiving a Public Records Request form, which is on the Division’s website.

◆ **Compliance Report**

Damage Prevention Case Report – Reviewed were the DPB statistics as of July 11, 2018, as well as the NOV Activity by Date report from May 15, 2018 to July 11, 2018.

◆ **Administrator Report**

With the absence of the Administrator, there was no Administrator Report.

◆ **Adjournment**

The Chairman adjourned the meeting at 3:10 p.m. (MDT)

MARK VAN SLYKE, CHAIRMAN
DAMAGE PREVENTION BOARD

RON WHITNEY, DEPUTY ADMINISTRATOR
DIVISION OF BUILDING SAFETY

DATE

DATE

08/24/2018rb