

## ETIC Dig Law Update

August 12th, 2016

Time line goals: John Fitzpatrick, Aimee Grmoljez and Doug Hardy have split up the consensus points and are working on the codification. Their goal is to complete their parts and merge them into a single file to review with Sonja on the 16<sup>th</sup> of this month. Sonja hopes to have a rough draft out for review at our next scheduled meeting of the stakeholders on September 30<sup>th</sup>, here in Helena.

The Safe Excavation Law Study Group meeting August 12<sup>th</sup> 2016. The meeting started at 10:00 am at the Central Montana Electric Power Cooperative office at 501 Bay Dr. in Great Falls.

There was a considerable amount of time spent discussing emergency locates. How we prevent abuse, response requirements and the definition.

There was consensus that we should leave the definition of emergency it as is in the current statute.

There is consensus that existing language "as soon as practical" for emergency locates should remain unchanged.

During the discussions, it was recommended that we use Montana Utility Coordinating Council as a place to ask for help when companies continually do not show up in a timely manner for emergency locates. At this time we don't feel we need to add any language to the statute to deal with this issue.

There is consensus that remedies in existing statutes are adequate regarding potential call in of emergency locates for non-emergency conditions.

Following extensive discussion regarding 48 hours vs 2 days, there was near consensus to leave as is, with requests for time to talk to constituents prior to full consensus agreement. An earlier consensus, #8 shown below allows a contractor to dig early if all locates are completed and confirmed prior to the work to begin date as shown on the ticket.

8. **There is consensus** that notwithstanding emergency locates, digging prior to the work to begin date on the call ticket (needs to coincide with the statute time, IE 12:01 AM) or the confirmation of facilities located by affected buried facility owners, does not constitute obtaining a locate.

Two full business days,

Current,

*(1) "Business day" means any day other than Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.*

We have consensus that keeping holidays and adding language (See counties county language to be consistent) as to the observed holiday time IE if Christmas falls on a weekend what day is observed. *Note see ND language on 1-1-216 in definitions.*

There is consensus contingent upon constituent discussion prior the next stakeholders meeting, If excavation has not occurred within the initial thirty days of the locate, the excavator shall request that the facility be relocated before excavating. Upon the third locate request at the same excavation site where no excavation has occurred after the initial two locates, the excavator is responsible for reasonable costs associated with relocating facilities in that location. If the issue of whether excavation has occurred is disputed for purposes of this section, the excavator bears the burden of proof that excavation has occurred or must demonstrate circumstances beyond their control delayed the excavation.

There is consensus that If excavation will continue more than 30 days beyond the date a locate is due by, the excavator shall not continue excavation until relocation has been called in and been completed.

There is consensus that the word “maintain” the mark be replaced with the word “preserve” the mark.

There is consensus that Fines in matrix shall double if the underground facilities owner is not a member of a one call as described in 69-4-502 subsection 2

There is consensus that the definition of maximum area to located per ticket for municipalities be expanded to include Rural Water and Sewer districts. (Used in consensus items 20 and 23)

There is consensus to include additional language in the excavation definition that allows farmers, landowners, homeowners and occupants to do the annual activates for necessary for farming and gardening

(4) (a) "Excavation" means an operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, auguring, tunneling, scraping, and cable or pipe plowing and driving.

(b) Excavation does not include;

- Surface road grading maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line.
- Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.72 centimeters] or more or are in previously undisturbed soil.
- Homeowners, occupants gardening and landscaping unless it disturbs the soil to a depth of twelve inches [30.48 centimeters] or more or is in previously undisturbed soil.

***Note: One item that we wanted to get back to was the need for positive response.***

## Consensus Items to Date

1. **There was consensus** to first work on change to meet minimum PHMSA requirements for the jurisdictional liquids and gas pipelines as everyone understands and supports this need.
2. **There was consensus** to dedicate adequate time at future stakeholder meetings to discuss a matrix of outcomes for not calling for a locate and or damaging buried lines as well as for buried line owners if they do not participate in a “one call program to provide locates. A goal discussed was prevention and education for unintentional acts with flexibility graduating up to properly penalize those whose actions indicate disregard for the requirement to call prior to digging and to the danger and damage of hitting buried lines.
3. **There was consensus** that the stakeholders in future meetings will work on increased reporting even of non- a jurisdictional pipelines and reach out to stakeholders that may not have attended this meeting. The ability to reach consensus in this area is the flexibility to report non-regulated pipeline incidents with only the detail deemed appropriate. Based on the judgment of the owner wires or other non-regulated pipeline facility, it may be appropriate to report only that there was an incident and the general location where. Conversely for the rare contractor failing to follow the locate law, then digging through lines with little regard for safety or damage, would likely result in a report as detailed as required for digging into a pipeline.
4. **We achieved consensus** in that, as a contractor damaging a facility after not calling to request locates aligns with an escalating penalty based on repeated offences.
5. We all agreed that we needed to focus on enforcement. There was a **consensus** that the best manner to deal with this deficiency was to establish an unpaid review board under the department of labor.
6. **We achieved consensus** in that, as a contractor damaging a facility after not calling to request locates aligns with an escalating penalty based on repeated offences.
7. There is **also consensus** that digging outside the described area of the locate request does not constitute having obtained a locate.
8. **There is consensus** that notwithstanding emergency locates, digging prior to the work to begin date on the call ticket (needs to coincide with the statute time, IE 12:01 AM) or the confirmation of facilities located by affected buried facility owners, does not constitute obtaining a locate.
9. **We achieved a consensus** that parties present would take the concepts of exhibit 2 (Part 1) to their members to try to get conventional approval that includes a rolling 12 month reset on the incident tracking used to escalate the level of fine.
10. **There is consensus** that paying or being subjected to a fine is not an admission of liability.
11. **Consensus was reached** to strike the third party impact multiplier from the fining matrix.
12. **There is consensus** that the dig law statute includes reference to civil liability similar to 19.122.070 of the Washington Law. *(3) This chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage.*
13. **There is consensus** with the fine matrix with the changes included in the attached file, *Fine Matrix Flow Chart 5\_10*, with the **tentative acceptance** of the number 100 as the reset number of locates for fine levels based on historical fines. More research will be done and presented at the next meeting to help set and come to a consensus on the reset number.

14. There is consensus that the reset as it pertains to the fine structure is 100 locates without damage or a rolling 12 month period.
15. Combining consensus 13 and 14, **there is consensus** in the *Fine Matrix Flow Chart 5 10*, with **acceptance** of the number 100 as the reset number of locates for fine levels based on historical fines.
16. There is consensus, damage reports and complaints involving jurisdictional pipelines shall be filed within 10 business days of discovery, other underground facility owners shall file damage reports within 20 days of discovery. Optional complaint reports shall be filed within 20 days of discovery.
17. There is consensus that if an excavator knowingly damages a jurisdictional pipeline whether leaks occur or not, or other buried facility, they shall notify the owner promptly, as soon as reasonably practicable following discovery of the damage.
18. There is consensus that if an excavator damages a jurisdictional pipeline causing a leak or product release of a hazardous liquid or gas, the excavator shall call 911 as soon as possible, to notify 911 of the release.
19. There is consensus that an excavator must provide for a locate, adequate information regarding the area requiring location of underground facilities to allow the locator to know they are locating the correct area to be excavated. Pre-marking the path of the excavation with white paint, marking with white flagging or, as the circumstances require to clearly define the path set for excavation. If call(s) by the locator to the excavator do not allow the locator to know the area to be located, an onsite meeting with the underground facility owner or locator, and excavator would be required.
20. We have consensus that Notifications for non-engineering locates will be limited to excavation work that will be commenced within 10 days and will be completed within 30 days of the notification, and shall not exceed an excavation of 2000 feet long by 300 feet wide within city limits, or 2 miles long by 1000 feet wide outside city limits. An excavator may not begin excavating until all utilities are located.
21. There is consensus that excavation does not include surface road grading maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line or agricultural cultivation not exceeding a depth of 12 inches.
22. There is consensus that All engineering locates will be completed within 5 business days of the request or 5 days from a meet on site date given at the time of the request which either is later.
23. We have consensus that Notifications for engineering locates will be limited to engineering work that will be commenced within 10 days and will be completed within 30 days of the notification, and shall not exceed a design of 2000 feet long by 300 feet wide within city limits, or 2 miles long by 1000 feet wide outside city limits.
24. There was consensus that we should leave the definition of emergency it as is in the current statute.
25. There is consensus that existing language “as soon as practical” for emergency locates should remain unchanged.
26. There is consensus that remedies in existing statutes are adequate regarding potential call in of emergency locates for non-emergency conditions.
27. Following extensive discussion regarding 48 hours vs 2 days, there was near consensus to leave as is, with requests for time to talk to constituents prior to full consensus agreement. An earlier consensus, #8 shown below allows a contractor to dig early if all locates are completed and confirmed prior to the work to begin date as shown on the ticket.

28. We have consensus that keeping holidays and adding language (See counties county language) as to the observed holiday time IE if Christmas falls on a weekend what day is observed. Note see ND language on 1-1-216 in definitions.
29. There is consensus contingent upon constituent discussion prior the next stakeholders meeting, If excavation has not occurred within the initial thirty days of the locate, the excavator shall request that the facility be relocated before excavating. Upon the third locate request at the same excavation site where no excavation has occurred after the initial two locates, the excavator is responsible for reasonable costs associated with relocating facilities in that location. If the issue of whether excavation has occurred is disputed for purposes of this section, the excavator bears the burden of proof that excavation has occurred or must demonstrate circumstances beyond their control delayed the excavation.
30. There is consensus that If excavation will continue more than 30 days beyond the date a locate is due by, the excavator shall not continue excavation until relocation has been called in and been completed.
31. There is consensus that the word "maintain" the mark be replaced with the word "preserve" the mark.
32. There is consensus that Fines in matrix shall double if the underground facilities owner is not a member of a one call as described in 69-4-502 subsection 2
33. There is consensus that the definition of maximum area to located per ticket for municipalities be expanded to include Rural Water and Sewer districts. (Used in consensus items 20 and 23)
34. There is consensus to include additional language in the excavation definition that allows farmers, landowners, homeowners and occupants to do the annual activates for necessary for farming and gardening

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***Note: One item that we wanted to get back to was the need for positive response. Possibly requiring the call center to offer the ability for positive response.***

First Name	Last Name	Company	26-Feb-16	1-Apr-16	10-May-16	10-Jun-16	12-Jul-16	12-Aug-16
Aaron	Arthur	MidRivers Coop		x				
Aimee	Grmoljez	MDU Energy (Crowley Fleck PLLP )	x		x	x	x	x
Alan	Olson	Montana Petroleum Association						
Cary	Hegeberg	Montana Contractors Association	x	x	x		x	x
Clint	Kalfell	UULC	x	x	x	x	x	x
Dale	Schultz	NorthWestern Energy & Montana Utility Cordinating Council	x	x	x	x	x	x
Danette	Welsh	Oneok						x
Dave	Wheelihan	Montana Electric Cooperatives' Association						
David	Resch	Knife River		x		x	x	
Don	Evans	WA811		x		x		x
Don	Johnson	Williston Basin Pipeleine						
Doug	Hansen	MDU Resources	x	x	x	x	x	
Doug	Hardy	Central Montana Electric Cooperative	x	x	x	x	x	x
Doug	Johns	UDIG	x					
Doug	Mc Broom	Montana Department of Transportation						
Elizabeth	Torske	Montana Public Service Commision	x					
Gary	Forrester	MDU Resources	x	x	x	x	x	x
Gary	Wiens	Montana Electric Cooperatives' Association						x
Geoff	Feiss	Montana Telephone Association		x				
Harold	Blattie	Montana Association of Counties					x	
Ira	Shaulis	Energy West	x					x
Jackie	Flikkema	Knife River	x	x				
Joel	Tierney	Montana Public Service Commision	x	x		x	x	x
John	Carmody	NorthWestern Energy						
John	Fitzpatrick	NorthWestern Energy	x	x			x	
John	Ostlund	Yellowstone County	x	x		x		
John	Torske	Montana Public Service Commision	x					
Josh	Hinrichs	ELM Locating & Utility Services	x	x			x	x
JP	Gordon	NorthWestern Energy	x	x		x	x	x
Justin	Cleveland	3 Rivers Communications	x	x	x		x	x
kelly	Johns	UDIG						
Leo (Joe)	Carmody	NorthWestern Energy	x	x		x	x	x
Marc	Gunderson	Badger Daylighting	x			x		x
Marc	Mullowney	NorthWestern Energy						
Mark	Crowley	City of Kalispell & Flathead Valley Utility Cordinating Council	x		x			
Michael	Donally	P66				x		
Michelle	Slyder	Cenex Harvest Staes	x		x	x		
Mickey	Grewal	Energy West	x					

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Molly	Hirschi	Stahly Engineering & Associates						
Rachelle	Benski	NWE			x	x	x	
Robert	OConner	Ronan Telephone		x	x	x	x	
Ronda	Wiggers	Montana Water Well Drillers' Association		x	x	x	x	x
Sara	Difonzo	Kinder Morgan	x	x				
Sonja	Nowakowski	Montana Legislative Services Division						
Theron	Parlik	Sime Construction	x	x	x	x	x	
Thomas	Moody	NWE				x		
Tim	Miller	Yellowstone County			x	x		
Tina	Beach	CHS				x		x
Todd	McKeever	Knife River		x				
Verlyn	Bailly	TransCanada						