

## **Montana Safe Excavation Study Group**

Update for July ETIC Meeting

Note: This update is through June 10<sup>th</sup>

## Highlights from the Safe Excavation Law Study Group meeting June 10<sup>th</sup> 2016

The meeting started at 10:00 am at the NorthWestern Energy Facility in Butte.

After a short review of the fine structure that we achieved consensus with at the May 10<sup>th</sup> meeting;

- There is consensus that the reset as it pertains to the fine structure is 100 locates without damage or a rolling 12 month period.
- With this vote and the consensus from the May 10<sup>th</sup> meeting, we have consensus on the fine matrix as it is communicated in the flow chart attached.

The definition and context is still to be defined but for this discussion a damage a report without full detail based on the facility owners damage report shall be filed. It is understood this data will only be used to track facility damages that will be analyzed so that focused education opportunities can lead to safer excavation.

The definition and context is still to be defined but for this discussion a complaint report is one filed with detail that will lead to the complaint process. Operators of jurisdictional pipeline will be required to fill out this report for all damages to their facilities. Operators of all other utilities may complete this report when they feel it is warranted. This report will include the excavator and utility owner's information and will start the complaint process.

- There is consensus, damage reports and additional complaint reporting involving jurisdictional pipelines shall be filed within 10 business days of discovery, and all other underground facility owners shall file damage reports within 20 days of discovery. Optional complaint reports shall also be filed within 20 days of discovery.
- There is consensus that if an excavator knowingly damages a 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.
- There is consensus that if an excavator damages a 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.
- There is discussion of potential consensus that an excavator must provide for a locate, adequate information regarding the area requiring location of underground facilitates to allow a reasonable person to know they are locating the correct area to be excavated. This may require flagging, white line painting, or other definitive description of the specific area to be excavated that is understandable to a reasonable person; if calls 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. This is in addition to the excavation description given to the call center.

Next meeting is July 12<sup>th</sup> in Helena with the following meeting scheduled for August 12<sup>th</sup> in Great Falls.

## 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.

### **Safe Excavation Study Group Attendance**

<b>First Name</b>	<b>Last Name</b>	<b>Company</b>	<b>26-Feb-16</b>	<b>1-Apr-16</b>	<b>10-May-16</b>	<b>10-Jun-16</b>	<b>12-Jul-16</b>
Aaron	Arthur	MidRivers Coop		x			
Aimee	Grmoljez	MDU Energy (Crowley Fleck PLLP )	x		x	x	
Alan	Olson	Montana Petroleum Association					
Cary	Hegeberg	Montana Contractors Association	x	x	x		
Clint	Kalfell	UULC	x	x	x	x	
Dale	Schultz	NorthWestern Energy & Montana Utility Cordinating Council	x	x	x	x	
Dave	Wheelihan	Montana Electric Cooperatives' Association					
David	Resch	Knife River		x		x	
Don	Evans	WA811		x		x	
Don	Johnson	Williston Basin Pipeleine					
Doug	Hansen	MDU Resources	x	x	x	x	
Doug	Hardy	Central Montana Electric Cooperative	x	x	x	x	
Doug	Johns	UDIG	x				
Doug	Mc Broom	Montana Department of Transportation					
Elizabeth	Torske	Montana Public Service Commission	x				
Gary	Forrester	MDU Resources	x	x	x	x	
Gary	Wiens	Montana Electric Cooperatives' Association					
Geoff	Feiss	Montana Telephone Association		x			
Harold	Blattie	Montana Association of Counties					
Ira	Shaulis	Energy West	x				
Jackie	Flikkema	Knife River	x	x			
Joel	Tierney	Montana Public Service Commission	x	x		x	
John	Carmody	NorthWestern Energy					
John	Fitzpatrick	NorthWestern Energy	x	x			
John	Ostlund	Yellowstone County	x	x		x	
John	Torske	Montana Public Service Commission	x				
Josh	Hinrichs	ELM Locating & Utility Services	x	x			
JP	Gordon	NorthWestern Energy	x	x		x	
Justin	Cleveland	3 Rivers Communications	x	x	x		
kelly	Johns	UDIG					
Leo (Joe)	Carmody	NorthWestern Energy	x	x		x	
Marc	Gunderson	Badger Daylighting	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				
Molly	Hirschi	Stahly Engineering & Associates					

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