



**COLORADO**  
**Department of**  
**Labor and Employment**  
Division of Oil and Public Safety

Underground Damage Prevention Safety Commission  
633 17<sup>th</sup> Street, Suite 500  
Denver, CO 80202-3610  
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**Date:** September 12, 2019

**Location:** Colorado Department of Labor and Employment  
633 17th Street, Suite 500  
Denver, CO 80202

**Present:** Mike Mills, Jim Moody, Jeannette Jones, Patrick Fitzgerald, Eric Kirkpatrick, Mark Jurgemeyer, Raymond Swedfeger, Mark Frasier, Tom Sturmer, Lori Warner, Randy Wheelock, Chris Kampmann, Katherine Duitsman.

**Absent:** Jeff Rumer, Julie Mileham.

**Note:** The meeting was recorded and started at 12:08pm. These minutes represent a summary of this meeting and are not intended to be a verbatim document. Audio recordings of the meetings can be obtained by contacting [cdle\\_safetycommission@state.co.us](mailto:cdle_safetycommission@state.co.us).

**EXECUTIVE SESSION** (requested prior to proceeding with the agenda)

Item: Discussion with attorney (AG's office) on Review Committee hearings and the status of answers to legal questions and recommendations. The committee motioned for executive session, motion carried and executive session was entered. After exiting the executive session, the members returned to working through the Agenda items.

**MINUTES APPROVAL:**

**A Motion was made to approve the minutes from the August 8, 2019, meeting:** motion carried and discussion was entered. There was no discussion; a vote was taken to approve the minutes. It was approved by a unanimous vote.

**COMPLAINT HEARINGS:**

- The Review Committee's Findings of Fact forms from the August 29, 2019 hearings were reviewed with the Safety Commission.
  - Complaint # 2019-030: **A Motion was made to adopt the Review Committee's recommended remedial action as noted in the Findings of Fact form:** Motion carried & discussion was entered. There was no further discussion. A vote was taken. It was approved by a unanimous vote.
  - Complaint # 2019-038: **A Motion was made to adopt the Review Committee's recommended remedial action as noted in the Findings of Fact form:** Motion carried & discussion was entered. Discussion included the idea that it may be useful to adjust the fine amount more than \$1,000 for attending training, to increase motivation to pursue that route. A vote was taken. It was approved by a vote of 11 to 2; no changes were made to the remedial action.

- The Review Committee's Findings of Fact forms from the September 10, 2019 hearings were reviewed with the Safety Commission.
  - Complaint # 2019-039: **A Motion was made to adopt the Review Committee's recommended remedial action as noted in the Findings of Fact form:** Motion carried & discussion was entered. There was no further discussion. A vote was taken. It was approved by a vote of 11 with 2 abstentions; no changes were made to the remedial action.
  - Complaint # 2019-028: **A Motion was made to adopt the Review Committee's recommended remedial action as noted in the Findings of Fact form:** Motion carried & discussion was entered. It was discussed that large locate companies may struggle with volume of calls and balancing their workforce. There is no relief in the statute for this issue & it is the responsibility of the locate company and utility owners to reach out and communicate with excavators. The fact that the same party continues to file complaints of a similar nature may reflect their frustration, that may be mitigated by better communication. A vote was taken. It was approved by a vote of 12 with 1 abstention; no changes were made to the remedial action.
  - Complaint # 2019-041: **A Motion was made to adopt the Review Committee's recommended remedial action as noted in the Findings of Fact form:** Motion carried & discussion was entered. Discussion included a question about the number of previous violations, and how they are counted. It was determined that until Final Determinations are made, the violations will not be counted if multiple hearings happen during a day of Review Committee hearings, or between Safety Commission meetings. A question was also asked about the Review Committee's rationale for not including the locate company in the remedial action. The Review Committee shared that based on the language in the statute, it is the responsibility of the utility owner to ensure locates are performed, and ultimately will increase public safety; despite previous Review Committee findings and final determinations. A vote was taken. It was approved by a vote of 12 with 1 abstention; no changes were made to the remedial action.
  - Complaint # 2019-042: **A Motion was made to adopt the Review Committee's recommended remedial action as noted in the Findings of Fact form:** Motion carried & discussion was entered. There was no further discussion. A vote was taken. It was approved by a vote of 12 with 1 abstention; no changes were made to the remedial action.
  - Complaint # 2019-043: **A Motion was made to adopt the Review Committee's recommended remedial action as noted in the Findings of Fact form:** Motion carried & discussion was entered. It was noted that due to extenuating circumstances, including communication between the locator and excavator, that while the locate was not performed in time, the Review Committee took the circumstances into consideration and that is the rationale for lower fine amounts. A vote was taken. It was approved by a vote of 12 with 1 abstention; no changes were made to the remedial action.
- September, October & November Hearing dates and Review Committee members were selected.

**CO 811 UPDATE (abbreviated due to time) :**

Jose Espino presented:

- Provided the intended presentation for review; noted they can answer questions at the next month's meeting and/or by contacting CO 811 staff directly
- Update on hold times: the issue has been addressed successfully. Average hold time is 3 minutes; details in provided presentation.

Discussion with members:

- Is there a process through CO 811 to note on a ticket if parties agree to delay a locate? No; currently they could get a new ticket.
- Clarification on renotification process: only alerts those utility owners that the excavator specifies have not yet performed a locate
- Safety Summit upcoming. It was requested that 4 members attend a panel event and 4 volunteers were identified.

### **COMPLAINT PROCESS (discussion of administrative process)**

- How to identify the involved parties, once a complaint is filed and parties are named - is the current process adequate and/or should the process or forms be modified? Since the form was modified previously, to ask for utility owners to be named when a locator is involved in a complaint, the process seems to be working properly in that regard. When it comes to other parties that may have subcontractors performing work, the onus is on the parties listed to communicate if additional parties are involved and include them in the process. At this time no processes will be changed.
- When CO 811 provides data to the Safety Commission, it was discussed that future data requests shall include the Positive Response & a list of Tier 2 members.
- When CO 811 is able to store attachments, the Safety Commission will consider asking for that data. No decision at this time.

### **BEST PRACTICES:**

A summary of the work completed by the Best Practices sub group was provided. Electronically locatable's Best Practice is still in draft. Moving forward, the group will work on topics for 45 minutes to allow 2 topics to be worked on per meeting.

### **ADMINISTRATIVE ITEMS/OPS UPDATE:**

- PHMSA review of CO program will include a meeting on September 26, 2019
- Database: OPS staff are meeting internally in October to discuss next steps
- SC members nomination status: 3 Members are planning to return. 3 Members are not returning
- Regarding complaint process: A statement has been added to the Hearing Notice to have documents submitted prior to a hearing. Members discussed the pros and cons of this language. Ultimately, receiving the documents prior is desired and not required.
- Complaint 2019-029, the parties involved in the complaint are asking if the issues described in the complaint are within the purview of the Safety Commission. Response from the Safety Commission is to have parties review the statute and determine if the complaint will be heard or be withdrawn. The Safety Commission does not deal with items that fall under civil court.
- Some fines will arrive after the due date (from USIC), should additional fees be assessed? Decision from the Members was that at this time no additional fees are assessed.
- Shifting hearing times: moving forward will look at 90 minute hearings, instead of 2 hours.

### **HOAs**

Questions have come up with stakeholders about whether HOAs are Homeowners (as described in the statute), or Utility Owners (as described in the statute). After discussion, the Members are not making any decision and suggest each HOA review the statute with their legal counsel.

### **OTHER BUSINESS:**

Agenda for the next meeting was discussed.

The next meeting is scheduled for October 10, 2019.

Meeting adjourned at 3:40 pm