



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

Underground Damage Prevention Safety Commission  
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**Date:** February 13, 2019

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

**Present:** Jim Moody, Randy Wheelock, Jeannette Jones, Chris Kampmann, Patrick Fitzgerald, Lori Warner, Mark Jurgemeyer, Mark Frasier, Julie Mileham, Mike Mills, Tom Sturmer, Jeff Rumer, Katherine Duitsman, Raymond Swedfeger (the latter 2 arrived between the approval of the Minutes and the CO 811 Update Motion)

**Absent:** Eric Kirkpatrick

**Note:** The meeting was recorded and started at 12:02pm. 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).

#### **MINUTES APPROVAL:**

A Motion was made to approve the minutes from the January 29, 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.

#### **OPS STAFF UPDATE:**

- Updated sign-in sheet so that you only need to put your initials & water provided per determination at 1/29/19 meeting
- Today's packet includes copies of: today's Agenda, 1/29 Meeting Minutes, an updated Complaint Form, an updated Data Request Form, Draft Complaint and Hearing Notice forms, and Draft emergency regulations. Paper clipped items at the back: items approved at the 1/29/19 meeting
- On 2/7/19 Mahesh Albuquerque sent a response to the 1/28/19 letter from PHMSA, re: Heather Gardens investigation (after checking in with Eric and Jeannette); will take PHMSA up on their offer to investigate
- Complaints received thus far: 7; sent to Commission Members via email on 2/6/19; two additional complaints received for incidents that occurred prior to the 8/8/18 effective date of the updated Excavation Requirements statute
- Prior to the formation of the Safety Commission, OPS and CO 811 had been meeting to get prepared for the Commission; JD Maniscalco (CEO of CO 811) contributed that the meetings were productive initially and that at this point may not be necessary as a separate event. Feedback from the Safety Commission is requested on how to proceed.
- It was reiterated that if there is any news on Safety Commission-related legislation to please let OPS know.

- Request that prior to adjourning the current meeting, Agenda items for the March meeting agenda be discussed.
- In preparation for today's meeting, Jeannette had asked OPS staff if the Safety Commission members had been officially appointed. OPS advised that they had received a letter that stated on 1/31/19 an Executive order for Safety Commission member appointment signed by Governor Polis and sent to Colorado General Assembly. Follow up should be forthcoming.
- With Bylaws now adopted, the Commission may want to determine a process to establish a permanent Chair and Vice-Chair.

**A Motion was made to have CO 811 provide the Safety Commission with a monthly update in lieu of meeting separately with OPS:** motion carried and discussion was entered. There was no discussion; a vote was taken. It was approved by a unanimous vote.

The ACEC event in March was discussed as to whether that was an OPS staff item or Safety Commission item. Several Members plan to attend and may sit on panels or present. AG's office reminded the Members to keep in mind their responsibilities towards conflict of interest, and otherwise can participate.

The Safety Commission asked that the Members continue to be updated on the official appointment process as it may require attendance at the General Assembly to speak about the Commission.

#### **CO811 UPDATE:**

JD Maniscalco (CEO) and Jose Espino (Director of Operations) were present.

- Software enhancements: Everything is interconnected; when one change is made it needs to be accommodated throughout. Ability to have file attachments is still being worked on with the IT team.
- New ticket types: Road grading tickets & SUE tickets: Not completely ready to go yet. Started sending tickets out to begin the conversation and fulfill the requirements of the law. These 2 items are the ones that have the most questions and lack of understanding.
- Reporting Tool: Still working on it. Currently using the Data Request Form. Still working on an internal process to make it more efficient. One note, the Form currently asks for history of violations. CO 811 does not maintain that data.
- Procedures Committee: Subcommittee of CO 811. Working on SUE, road grading, attachments, positive response. The committee is made up of industry stakeholders.
- Outreach & Communication: brought some magazines and resources that address the industry. Using different marketing techniques, promotions and contests to promote CO 811. There will shortly be a new online Learning Management program that should come out in March.
- Tier 2 Conversion: in progress.

Questions from the Safety Commission Members focused on the data attachments. It was discussed that since it is not currently possible to input the data into CO 811's system, the data is being shared directly between the excavator and owner/operator.

There was also discussion regarding the data requests made after a complaint is filed that are sent to CO 811 and whether that data is shared with the parties involved in a complaint. CO 811 noted that they process data requests from the Safety Commission and provide that information to said commission. What is done with the data at that point is the decision of the Safety Commission.

During the Procedures Committee topic, Safety Commission members noted that 3 Members are on that Committee - to be as transparent as possible. This was noted as a fact that may support the efforts in the industry for consistency.

## **PROCESS FOR STATUTE QUESTIONS AND BEST PRACTICES:**

Stakeholders are reaching out to understand the Statute. One type of question is asking for guidance and clarifications. Another question type is on specific topics, such as SUE. The AG's office noted that they have also received some questions. Currently their response has been that it is not their role to interpret statute for people, because if that organization's attorney has an alternate interpretation that is problematic. However, the Safety Commission will be working to establish Best Practices and can discuss how they should be addressed. The Safety Commission members discussed how to compile the questions. Safety Commission asked OPS to make this a task item, to develop a process. Within this process, questions should be categorized - similar to the process CO 811 uses.

## **DRAFT COMPLAINT & HEARING DOCUMENTS**

### Complaint Form:

Discussion was held around the content of the form. A question was asked regarding the Date Received, and how that was noted. OPS advised their process and it was asked by the Commission that a space is made on the Complaint Form to add that date.

**A Motion was made to approve the Complaint Form, with the aforementioned change of including Date Received:** motion carried and discussion was entered. There was no discussion; a vote was taken. It was approved by a unanimous vote.

### Complaint Received & Hearing Notice Forms:

OPS had developed 3 drafts, one which combined the Complaint Received & Hearing Notification Forms - for 7 complaints received prior to today's meeting, and 2 separate forms for complaints moving forward. The Safety Commission feedback was to review the draft forms that are separate documents. Discussion was held around the content of the form and some edits were made to the forms during the meeting. The Report # was discussed and determined to be the year and a 3 digit number, based on the date received. Feedback from the Commission Members was to use the 2 separate forms for all complaints and not have a special form for the initial 7 complaints. Discussion was had on how point of contact and contact information is determined for the person alleged against - both when it is unknown, and when it is against a large corporation with multiple points of contact. It was noted that this might be an arduous process. Perhaps the onus is on the person making the complaint to provide the information, and otherwise these challenges may need to be addressed in the Hearing and Review Committee process.

**A Motion was made to approve the Complaint Received & Hearing Notice Forms as drafted in the meeting:** motion carried and discussion was entered. In the discussion final edits were made to the forms. A two-part question was asked as to if, and then when, information from the Data Request form would be shared with the persons involved in the complaint. In the discussion, Members discussed what other data received by the Commission in the process might be shared. This led to additional edits to the form.

**An Amended Motion was made to approve the Forms as revised;** a vote was taken. It was approved by a unanimous vote.

### Review Committee Checklist:

The checklist includes a list of the Safety Commission Members and what they represent in the Statute: Owner/Operator, Excavator, Other. Discussion was held around the content of the form and representation categories, with the goal being a balanced review committee.

**A Motion was made to approve the Review Committee Checklist:** motion carried and discussion was entered. There was no discussion; a vote was taken. It was approved by a unanimous vote.

### Emergency Regulations:

Draft document developed to establish a process to hear complaints. This is until permanent regulations can be established. The emergency regulations would be effective once filed by OPS with the Secretary of State.

Discussion was held around the content of the draft and some edits were made during the meeting. An option to include language regarding a Pre-hearing Statement, in the Emergency Regulations, was presented.

**A Motion was made to not include a Pre-hearing Statement:** motion carried and discussion was entered. There was no discussion; a vote was taken. It was approved by a unanimous vote.

Discussion was held around the process of conducting a hearing and handling documents and information, and how that can be shared.

#### **EXECUTIVE SESSION** (within Emergency Regulations)

Item: Discussion with attorney (AG's office) on how to handle sensitive documents and information. The committee motioned for executive session, motion carried and executive session was entered.

After exiting the executive session, additional edits were made to the Emergency Regulations document to address feedback from various Members. An example is the term "violation" requires a definition. It was discussed that a template form should be developed for the Review Committee that allows them to complete a Findings of Fact form during the hearing. Safety Commission asked OPS to make this a task item, to develop a template, for the next meeting agenda.

In the discussion, it was noted that on the *Data Request Form*, the "number of violations" should be replaced with the "number of notifications."

**A Motion was made to approve the Emergency Regulations as revised:** motion carried and discussion was entered. There was no discussion; a vote was taken. It was approved by a unanimous vote.

#### **REVIEW COMMITTEE PROCEDURES**

##### **EXECUTIVE SESSION** (within Review Committee Procedures)

Item: Discussion with attorney (AG's office) of sensitive documents and information regarding complaints. The committee motioned for executive session, motion carried and executive session was entered.

After the executive session, the Safety Commission discussed if any Member would potentially have a conflict of interest with being on the hearing for the first 4 complaints received; none were identified. A date and time(s) for the Review Committee to hear complaints was chosen; 5 Members were chosen to participate.

#### **OTHER BUSINESS:**

- Agenda for the next meeting was discussed.
- Additional time will be allotted for CO 811's update, than previously given.
- Safety Commission requested that OPS communicate with the persons involved in the complaints, including modifying the hearing time to consolidate if need be.

The next meeting is scheduled for March 13, 2019.

Meeting adjourned at 4:09 pm.