

Consensus Items to Date

1. **There was consensus** to first work on change to meet minimum PIMSA requirements for the regulated liquids and gas pipelines as everyone understands and supports this need.
2. **There was consensus** to dedicate adequate time at future stockholder 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-pipelines and reach out to stake holds 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 it 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.

On April 1st 2016 at 10:00 am a group of stakeholders met in Billings at the Montana Dakota Utilities office. Our objective is to define and agree upon proposed changes to our existing dig law that will satisfy all federal excavation enforcement criteria, improve the safety of all people performing excavation tasks and protect our infrastructure.

To assure we stay on track our goals were reviewed at the start of the meeting.

- **Achieve consensus**
- Focus on becoming compliant. Which translates into making certain that all gas and liquid lines which are under the jurisdiction of PHMSA and the Montana PSC are made safe and protected under the Montana Safe Digging rules.
- Then focus on increasing excavation safety around all utilities which in turn will help maintain the integrity of our infrastructure.

Understanding the complexity and challenges involved in defining the penalties associated with this law we dedicated this meeting to working on a defined penalty matrix. John Fitzpatrick presented a document for us to use as a starting point.

We started on the excavator side of penalty matrix. The first decision block asks, “Did the excavator obtain a locate”. After a lengthy discussion on what a locate was, we determined we should work on what we could agree wasn’t a locate.

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.

There is **also consensus** that digging outside the described area of the locate request does not constitute having obtained a locate.

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.

Although we didn’t vote on it, there appears to be a consensus that statute, when dealing with fines, should define as much detail as possible leaving the Board’s responsibility to be tracking and ensuring the matrix is properly implemented. **(We will need to vote on this next meeting)**

John Fitzpatrick stated that he believes if you hit two lines in one excavation it is one incident. We did not take a consensus vote on this but it appeared there was consensus. There needs to be more discussion on this to set distances and for situations like joint trench. No vote was taken for a consensus.

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.

There is consensus that paying or being subjected to a fine is not an admission of liability.

Below is a list of items we debated that we do not have a consensus on but have agreed to continue discussions and to bring back fresh ideas to the next meeting that can help build a product that brings consensus.

1. There needs to be a difference in the fine matrix between land owners and contractors.
2. Contractors that are bigger and dig more should not escalate to higher fines or to the top of a repeat offenders list as fast as those smaller contractors that dig less and are exposed less.
3. To make things consistent, how do we track contractors that have multiple area offices, multiple subsidiaries and those that change names often?
4. Do we develop a complaint driven system where liquid and gas companies are required to file a complaint and other utilities are allowed to do so at their discretion or do we have a completely bifurcated law that separates gas and liquid lines from other utilities.
5. Should incidents that get reported without a complaint filed, or incidents on the non-pipeline side of a bifurcated law be used in the repeat offender calculation in the penalty matrix? If so how would we track this?
6. How do fines for a landowner or homeowner that may not know the extent of the law and hit a line differ from excavators that dig all the time?

Those present at the meeting were asked to bring back some proposal that would help achieve a consensus on a fine matrix.

Our next meeting will continue to focus on penalties for non-compliance. We will meet at the NorthWestern Energy building, 11 W. Park St, in Butte on May 10th at 10:00 am.

Exhibit 2 (Part 1)
Examples of Fine Calculations
For Damage to Natural Gas or Hazardous Liquids Pipelines

Case 1: Excavator does not obtain locate and damages a pipeline

Other Facts

No prior damage incidents
No property damage
No person injured

Level 1 Fine	\$500
Level 2 Fine	<u>\$ 0</u>
Total Fine	\$500

Case 2: Excavator does not obtain locate and damages a pipeline

Other Facts

Third damage incident
Explosion and fire does \$100,000 damage to house
No person injured

Level 1 Fine	\$ 2,000
Level 2 Fine	<u>\$12,000</u>
Total Fine	\$14,000

Case 3: Excavator obtains locate but damages a pipeline anyway

Other Facts

Second damage incident
No property damage
Pipeline explodes; shrapnel strikes third party onlooker who loses an eye

Level 1 Fine	\$ 500
Level 2 Fine	<u>\$ 2,000</u>
Total Fine	\$ 2,500

Case 4:

Excavator does not obtain locate and damages a pipeline

Other Facts

Seven prior incidents

Property damage less than \$25,000

No person(s) injured

Level 1 Fine	\$ 20,000
Level 2 Fine	<u>\$ 80,000</u>
Total Fine	\$100,000