



**TENNESSEE UNDERGROUND UTILITY DAMAGE PREVENTION BOARD
EXECUTIVE COMMITTEE MEETING
Meeting on February 27, 2017**

MINUTES

The Executive Committee meeting of the Tennessee Underground Damage Enforcement Board commenced at 10:50 a.m. in the Ground Floor Meeting Room of 502 Deaderick Street, Nashville, Tennessee 37243.

Executive Committee Members Present:

Bob Lambert
Steven Raper
Kevin Tubberville, Chairman

Tennessee 811 Members Present:

Craig Ingram
Bill Turner

TRA Staff Present:

Stacy Balthrop
Jaclyn Hammons
Slayde Warren
Aaron Conklin
Ryan McGehee

Stacy Balthrop opened the meeting, and the Committee considered the Minutes of the last meeting of October 18, 2016. There were no corrections, and the Minutes were approved on a voice vote.

Discussion of Expectations for Pilot Compliance Training Program:

Bill Turner stated that he had been asked to discuss the training, and he asked Craig Ingram, who will be coordinating most of the training, to make the presentation. Mr. Ingram stated he wanted to give a topical outline of the procedure that will be followed to make sure violators are aware of the requirements of the legislation, hopefully deterring future violations and reducing damages.

Mr. Ingram stated that one of the most important aspects of the Underground Utility Damage Prevention Act is the requirement of the notification and the steps that go into that notification. He stated that emergency excavation and demolition will be reported as violations on a regular basis and will be addressed in the training. He indicated that training would cover some of the other types of tickets, including the design locate, as well as the responses required from a utility organization and a utility operator when they receive the notification of the excavation work. He stated they would be discussing damages, the penalty and violation structure, and the enforcement board and the role of the executive committee.

Mr. Ingram asked if there were any questions about the general outline of the training program or any areas the Committee might see as being more effective or important to cover. Kevin Tubberville stated that there is a mix in the complaints presented for consideration of who may be required to go to training, or who could benefit the most, and he wondered if that could become more customized – concentrating on whether it is someone who doesn't understand or know about the law versus someone who might be ignoring the law or false reporting an emergency, etc. Mr. Ingram responded that they could customize the training accordingly if details are shared with them prior to training.

Mr. Turner stated that they are looking at a two-tiered fee structure. Once a month Tennessee 811 would offer an on-site training opportunity at their location, and that would be a price per person for those who choose to come to Nashville to satisfy their training requirement. If Tennessee 811 needs to go to them, it will be a single price to do an off-site training, which would include up to five people at a flat rate, plus expenses. If more than five people are in that session, it would be an add-on per-person fee.

Mr. Turner stated that on-site training at Tennessee 811 would be \$85 per person, with all necessary training materials provided. Off-site training would be priced at a flat fee of \$500 for up to five people, plus any additional expenses (such as hotel and/or travel expenses, facility rental, etc.), and any additional people after the five would be at \$85 per person, with all necessary training materials provided.

Bob Lambert pointed out that utilities in other areas of the State would probably be able to provide off-site training facilities in order to hold down costs. Mr. Tubberville asked if a utility provider offered the facility and could fill the room with additional people over the five per the fee schedule, would the utility still have to pay the \$85 fee for each additional person. Mr. Turner stated that they came up with this pricing schedule because the contract requires it and that he would rather price on a case-by-case basis, but he was trying to avoid coming before the Committee every time.

Mr. Tubberville asked if there would be a requirement to pre-register in order to avoid having too many people, or perhaps too few, show up for training. Mr. Turner responded that they would post information on the website so people could sign up and that there would be limits placed on the number who could participate. Mr. Tubberville asked if there will be other information available, such as a newsletter. Mr. Turner responded that with the contract now in place they can select dates and get that information on the website, as well as the monthly newsletter they send out.

Presentation of Investigation of Complaints:

Ms. Balthrop asked if anyone had questions before starting the complaint considerations, and Mr. Tubberville asked about information on the revised notice. Ms. Balthrop stated that the notice contains the date of the alleged violation, the address of the alleged violation, the complainant, the facility and the root cause. Mr. Tubberville said that he thinks the complainant is less important than adding more description of the events. He also asked if it would be possible to give the Committee a breakdown of the number of cases that have been heard by the Committee, how many have been handled, and how many are pending.

The Committee heard and ruled on the following complaints:

EB16-0004 –

Alleged Violator: Reyes Acuna representing A&C Concrete

Complainant: Atmos Energy

Facility Type: gas

Equipment Used: backhoe

Root Cause: no notification to Tennessee 811 before excavating

Facts: An Atmos line was damaged on 10/5/16. Ray Acuna acknowledged that the complaint was valid, that he was solely responsible for the damage, that he failed to notify Tennessee 811, and that he had taken care of the damages with Atmos. Mr. Acuna is the owner-operator of a very small company.

Recommendation: 1st violation training, with Mr. Acuna attending the training

Finding: Follow the recommendation: 1st violation training for Mr. Acuna

EB16-0009 –

Alleged Violator: Horizon Construction

Complainant: Comcast

Facility Type: cable

Equipment Used: construction dump truck

Root Cause: a lifted dump truck bed hit a Comcast aerial line

Facts: A complaint was submitted by Comcast on 10/20/16. An Horizon employee left the dump truck bed lifted, causing damage to an overhead aerial line. The company acknowledged the damage.

Recommendation: No violation since it was not an underground utility that was damaged; close this complaint administratively

Finding: Follow the recommendation; close complaint administratively

A discussion followed regarding the handling of future complaints that clearly are not a violation of the Underground Utility Damage Prevention Act. The Committee voted unanimously to give the TRA staff the ability to administratively close those complaints as nonviolations.

EB16-0010 –

Alleged Violator: Robert Burch with Palm Beach Grading

Complainant: Atmos Energy

Facility Type: gas

Equipment Used: trackhoe

Root Cause: short notification to Tennessee 811 and didn't allow time for lines to be marked before beginning excavation

Facts: Atmos Energy filed a complaint on 10/14/16 against contractor Robert Burch. The contractor had called a short-notice ticket to Tennessee 811 but did not allow three business days for the lines to be marked before excavating. Mr. Burch acknowledged responsibility for the damage but stated there were no obvious markings that indicated the presence of a gas line. He further stated that because of Hurricane Matthew, his Florida office was having communication problems with Tennessee 811.

Mr. Tuberville stated that it appears there is a locate ticket effective on the same date as the violation, and he thought the law says that once the ticket is effective the contractor should assume he can proceed. He asked for clarification of that process. Jaclyn Hammons responded that the rule applies that you allow three business days for the lines to be marked after the locate ticket is approved, thus the effective date is actually three business days later. A discussion ensued regarding the difficulty in determining the person to send to training in a situation such as this, where the home office in another state is directing the actions in Tennessee and may not be familiar with Tennessee 811 and the Underground Utility Damage Prevention Act.

Recommendation: 1st violation training

Finding: Follow the recommendation; training for Mr. Burch and a corporate representative from their Florida office

EB16-0014 –

Alleged Violator: American Coatings, Inc., Ben Carswell, owner (see also EB16-0015)

Complainant: OSP on behalf of Comcast

Facility Type: cable

Equipment Used: gas powered auger

Root Cause: they did have a locate ticket; not reporting damage to the underground facility

Facts: OSP filed a complaint on behalf of Comcast on 10/26/16. Ben Carswell stated that they needed to dig holes in the ground at an apartment complex, using an auger, in order to build a fence. They provided the Tennessee 811 ticket that was called in prior to the excavation. After digging, they hit an underground utility that was not marked at two different buildings in the apartment complex on two different days (see also EB16-0015). They called 811 to report the damage and called in a second locate ticket. Mr. Carswell stated that he didn't know who owned the lines, and that is why he called 811 instead of

Comcast. Neither 811 nor OSP was able to provide Ms. Hammons with a damage ticket or outage report.

Recommendation: No violation: American Coatings used reasonable care by notifying Tennessee 811 of the damage that occurred without knowing who the underground utility was because it was not marked

Finding: Follow the recommendation: no violation

EB16-0015 –

Alleged Violator: American Coatings, Inc., Ben Carswell, owner (see also EB16-0014)

Complainant: OSP on behalf of Comcast

Facility Type: cable

Equipment Used: gas powered auger

Root Cause: they did have a locate ticket; not reporting damage to the underground facility

Facts: OSP filed a complaint on behalf of Comcast on 10/28/16. Ben Carswell stated that they needed to dig holes in the ground at an apartment complex, using an auger, in order to build a fence. They provided the Tennessee 811 ticket that was called in prior to the excavation. After digging, they hit an underground utility that was not marked at two different buildings in the apartment complex on two different days (see also EB16-0014). They called 811 to report the damage and called in a second locate ticket. Mr. Carswell stated that he didn't know who owned the lines, and that is why he called 811 instead of Comcast. Neither 811 nor OSP was able to provide Ms. Hammons with a damage ticket or outage report.

Recommendation: No violation: American Coatings used reasonable care by notifying Tennessee 811 of the damage that occurred without knowing who the underground utility was because it was not marked

Finding: Follow the recommendation: No violation

EB16-0016 –

Alleged Violator: RNH Construction, Randy Hasse

Complainant: Atmos Energy

Facility Type: gas

Equipment Used: mini excavator

Root Cause: no notification to Tennessee 811 before excavating

Facts: Atmos Energy filed a complaint on 10/31/16. Mr. Hasse stated that he was responsible for the damage, that he was removing an existing spa and had no intention of actually breaking ground, and that while moving a pipe, he broke ground and damaged the gas line. He confirmed that he did not have an 811 ticket and that he was using mechanized equipment during this excavation. Mr. Hasse has paid for the repairs.

Mr. Tuberville questioned whether Mr. Hasse was using the excavator to simply lift the spa or if he was actually digging in the ground with the excavator. Slayde Warren indicated that he did not believe Mr. Hasse was, by definition, excavating. Mr. Lambert stated that he believes that if Mr. Hasse was using the excavator simply for lifting purposes, it would not be a violation of the damage provision of a locate request, and he asked that this complaint be put on hold until that question is answered.

Recommendation: 1st violation training, with Mr. Hasse attending the training

Finding: Put on hold; request for additional information

EB16-0019 –

Alleged Violator: American Coatings, Inc. (duplicate filing of EB16-0014)

Recommendation: Duplicate filing of EB16-0014; administratively close

Finding: Follow the recommendation: administratively close

The Committee voted unanimously to allow the TRA staff to administratively close any duplicate complaints that may be filed in the future.

EB16-0020 –

Alleged Violator: American Coatings, Inc. (duplicate filing of EB16-0015)

Duplicate filing of EB16-0014; administratively close

EB16-0031 –

Alleged Violator: Adams Excavating, Anthony Adams, owner (see also EB16-0069)

Complainant: OSP on behalf of Comcast

Facility Type: cable

Equipment Used: backhoe

Root Cause: they did have locate ticket; digging with backhoe in tolerance zone

Facts: OSP filed a complaint on behalf of Comcast on 11/11/16. Mr. Adams hit a Comcast cable line while excavating in the tolerance/safety zone using a backhoe. Comcast and Mr. Adams both confirmed that there was an outstanding 811 dig ticket when the damage occurred. Mr. Adams admitted fault and stated he would cooperate with the investigation. A second complaint was filed against Mr. Adams in EB16-0069. He stated he did not realize the lines would be at different depths and that he now knows to hand-dig in the safety zone in the future.

There was some discussion as to whether this complaint and the one in EB16-0069 should be considered one violation or two since Mr. Adams, who obviously understands some of the rules, had not received notification of the first complaint at the time of the second violation.

Finding: consolidate EB16-0031 and EB16-0069 into one violation; training for Mr. Adams and any additional operators who work for his company

EB16-0069 –

Alleged Violator: Adams Excavating, Anthony Adams, owner (see also EB16-0031)

Complainant: OSP on behalf of Comcast

Facility Type: cable

Equipment Used: backhoe

Root Cause: there was a locate ticket, but it had expired; no notification to Tennessee 811 before excavating

Facts: OSP filed a complaint on behalf of Comcast on 12/16/16. Mr. Adams responded to this complaint and the complaint in EB16-0031 at the same time. He stated that he was digging with a backhoe at the bottom of a hill in this instance and did not realize the lines would be at different depths. Mr. Adams admitted fault and stated he will hand-dig in the safety zone in the future. He confirmed this damage was done at the same location but at

the bottom of the hill instead of the top as in the first incident. Also, the locate ticket had expired by the time of the second hit.

There was some discussion as to whether this complaint and the one in EB16-0031 should be considered one violation or two since Mr. Adams, who obviously understands some of the rules, had not received notification of the first complaint at the time of the second violation.

Finding: consolidate EB16-0031 and EB16-0069 into one violation; training for Mr. Adams and any additional operators who work for his company

EB16-0055 –

Alleged Violator: Eugene Smith, E&S Tree Service

Complainant: OSP on behalf of Comcast

Facility Type: cable

Equipment Used: trencher

Root Cause: no notification to Tennessee 811 before excavating

Facts: OSP filed the complaint on behalf of Comcast on 12/7/16. Mr. Smith, proprietor and sole employee of E&S Tree Service, damaged an underground cable while digging with a trencher. Mr. Smith failed to notify Tennessee 811 for a locate ticket. Mr. Smith admitted fault but stated that he was not aware of the need to contact Tennessee 811 for a locate ticket.

Recommendation: training for Mr. Smith

Finding: training for Mr. Smith

EB16-0057 –

Alleged Violator: Nutt Construction (duplicate of EB16-0056, which is not being heard today)

Duplicate complaint; close administratively

EB16-0061 –

Alleged Violator: American Foundation & Basement Repairs

Complainant: Richard Wilson, a locater representing USIC

Facility Type: cable

Equipment Used:

Root Cause: false emergency locate

Facts: Richard Wilson, a locater with USIC, filed the complaint on 12/14/16. Mr. Wilson stated that he was required to respond to an emergency locate request filed by Jennifer Alls on behalf of American Foundation & Basement, but this request did not meet the definition of an emergency locate. Mr. Darle Canova, manager with the company, checked the records and admitted that a member of his staff did call in an inappropriate emergency locate, and he stated that he has briefed his staff on the emergency locate parameters.

Recommendation: 1st violation training, with Ms. Alls, and possibly Mr. Canova, attending the training

Finding: Follow the recommendation: 1st violation training, with Mr. Canova and up to five staff members, especially anyone who calls in a ticket, attending the training

EB16-0066 –

Alleged Violator: Ronald Vanderham, homeowner

Complainant: OSP on behalf of Comcast

Facility Type: cable

Equipment Used: shovel

Root Cause: no notification to Tennessee 811 before excavating

Facts: OSP filed the complaint on behalf of Comcast on 12/15/16. Mr. Vanderham stated he had just moved to Tennessee, that he was familiar with Tennessee 811, and that he was not familiar with the rules. Mr. Vanderham stated he is responsible for the damage, that he did not call 811 prior to digging, and that he was using a shovel to dig holes to install a fence.

Recommendation: No violation: mechanized equipment was not being used when the damage occurred, so it does not meet the definition of excavation

Finding: Follow the recommendation: No violation

There was discussion regarding the possibility of including information/brochures from Tennessee 811 with notices of violations that go to homeowners, as well as possibly including a statement regarding requesting a locate anytime a homeowner is disturbing the ground.

Ms. Balthrop inquired about TRA staff administratively closing complaints such as this - when it does not meet the definition of excavation. Mr. Lambert stated that he believes the Committee still needs to see these complaints, as they could still be a violation. Mr. Tubberville requested that administratively closed complaints be included in the summary.

EB16-0064 –

Alleged Violator: Tellico Dirt Works

Complainant: PRG Consulting on behalf of Charter Communications

Facility Type: cable

Equipment Used: backhoe

Root Cause: no notification to Tennessee 811 before excavating

Facts: PRG Consulting filed the complaint on behalf of Charter Communications on 12/15/16. Mr. Kingoo with Tellico Dirt Works was operating a backhoe when he hit a Charter feeder line. No call was made to Tennessee 811. The date the complaint was filed exceeded the 90-day window allowed for the filing of damage complaints. Mr. Warren notified PRG Consulting of the 90-day requirement, and PRG acknowledged that the investigation could not proceed.

Recommendation: No violation: the complaint is outside the 90-day filing window

Finding: Follow the recommendation: No violation – however, inform Tellico Dirt Works that they were in violation, but the 90-day window kept them from receiving a violation from the Committee

Mr. Warren's recommendation included Committee approval for future complaints that fall within the 90-day window to be closed administratively, and he noted that the 90-day requirement is on the web page and complaint form. Ms. Balthrop asked if the Committee wants future summaries to include administrative closures for the 90-day window

requirement, and if so, should they include complaint details. Mr. Tubberville responded that a summary stating that it's outside the 90-day window would be sufficient.

EB17-0003 –

Alleged Violator: Acorn Electric

Complainant: Atmos Energy

Facility Type: gas

Equipment Used: backhoe

Root Cause: failure to hand expose in tolerance area

Facts: David Roberts with Atmos Energy filed the complaint on 1/5/17, alleging that Scott Pierson with Acorn Electric caused the damage due to failure to hand expose. Nancy Murphy, president of Acorn Electric acknowledged damage to a gas line by her employee and stated that he should have been using a shovel or hand tool in this specific situation. Ms. Murphy admitted negligence by this employee and stated that the employees are aware of the importance of using hand tools when appropriate. Tennessee 811 was contacted beforehand, and Acorn Electric acknowledged that mechanized equipment was used.

Recommendation: training for Scott Pierson

Finding: training for Scott Pierson, as well as his supervisor

EB17-0004 –

Alleged Violator: Michael Vaughn (duplicate of EB 16-0037, which is not being heard today)

Facility Type: gas

Equipment Used: backhoe

Root Cause: digging in a tolerance zone and failure to hand-dig

Duplicate submission

EB17-0021 –

Alleged Violator: John Poynter, Poynter's Masonry

Complainant: OSP on behalf of Comcast

Facility Type: cable

Equipment Used: shovel

Root Cause: no notification to Tennessee 811 before digging

Facts: OSP filed the complaint on behalf of Comcast on 1/30/17. OSP investigator Russell Tedro and Mr. Poynter both confirmed that a shovel was used to cause the damage, not mechanized equipment.

Recommendation: No violation: mechanized equipment was not being used when the damage occurred, so it does not meet the definition of excavation

Finding: Follow the recommendation: no violation

The Committee discussed whose signature should be on the citation and/or dismissal notices that reflect the Committee's rulings, and it was decided that the Committee members' signatures would be appropriate. Mr. Tubberville inquired if the training provider will be informed of the rulings as well, especially since there are other people scheduling training sessions, and because there is a 30-day requirement. Ms. Balthrop indicated the TRA staff will be monitoring the training.

The Executive Committee meeting adjourned at 12:36 p.m.