

OHIO UNDERGROUND DAMAGE PREVENTION COALITION

Exemptions Subcommittee Meeting

June 29, 2021

Call Meeting to Order:

Introductions and Attendance (17):

Gene Barbour, Bryon Bedel, Dave Berens, Heidi Fought, George Gillespie, Joe Igel, Jeff Kursman, Mike Lawson, Scott Lucas, Joe Marinello, Kyle McLeod, Mark Niehe, Darren Owens, Kevin Schimming, Les Schell, Scott Tustin, Thomas Wetmore

Recap:

Kevin Schimming provided an overview of the previous Exemption Subcommittee discussions. Participants on the call reviewed the drafted language and provided feedback on the eight proposed exemptions.

Exemptions

Proposed Draft language added to an enforceable section of the law:

3781.25(I) "Excavation" means the use of hand tools, powered equipment, or explosives to move earth, rock, or other materials in order to penetrate or bore or drill into the earth, or to demolish any structure whether or not it is intended that the demolition will disturb the earth. "Excavation" includes such agricultural operations as the installation of drain tile, but excludes agricultural operations such as tilling that do not penetrate the earth to a depth of more than twelve inches. "Excavation" excludes any activity by a governmental entity which does not penetrate the earth to a depth of more than twelve inches. "Excavation" excludes activities listed below when performed in the public right of way and providing that the activity does not penetrate the earth to a depth of more than twelve inches. "Excavation" excludes coal mining and reclamation operations regulated under Chapter 1513 of the Revised Code and rules adopted under it.

1. The cleaning of debris from open roadside drainage systems that does not alter the existing invert of that drainage system.

Strong concerns were expressed by the utilities that this activity often poses safety issues due to the significant erosion that takes place in roadside drainage systems and the shallow depth of many utilities, including gas lines.

It was suggested that the clearing of roadside ditches is frequently not a planned or routine activity when heavy rains threaten to flood roadways. "This is an exemption that townships rely upon and was the top of the list as exemptions to be retained." Discussion centered around possible room for consideration of the difference between routine clearing which is planned (when 48-hour locate requests could be submitted to OHIO811), versus day-to-day decisions based upon potential "emergency" situations.

Any statistics around the number of locate requests for ditch clearing and/or damages caused by ditch clearing?

The Ohio Township Association conveyed a willingness for further dialogue, but cited their significant movement on this issue, in reducing their originally proposed exempted activities from 18 to 8. They also expressed the challenge of moving from a “blanket exemption” for local governments to “needing to pull a ticket for everything.”

2. Milling of asphalt road surface except at signalized intersections and where signal and/or environmental sensors may be present.

Milling was a proposed exemption of significant discussion, with several cases cited of utilities, including gas lines, electric and fiber, located just 3 inches below the surface in asphalt, concrete and substrate. “Road milling is always a planned activity. Submitting a locate request shouldn’t interfere with this activity.”

Alternately, questions were raised as to how/why utilities are installed at so shallow of a depth, and whether any contractor/excavator would realistically be expected to hand dig miles of roadway for millwork.

It was suggested that utilities would prefer to have the opportunity to have a representative on site to consider the relocation of underground utility infrastructure and indicated that a locate request provides this opportunity.

Question was posed: “Why is there a greater degree of safety and protection afforded to private companies versus municipal workers conducting the exact same activity on the same roadways? Shouldn’t safety be balanced?”

3. Underground utility locating and surveying activities limited to uncovering valve enclosures, manhole covers, or similar utility components, placement of temporary marking flags or wooden lathe and grounding of locating equipment.

No concerns were expressed with this exemption.

4. Utility wood pole inspection.

This is a case of utilities hand digging only a couple of inches around their own infrastructure, and therefore, no significant concerns were expressed with this exemption.

5. Repair or replacement of utility pedestals or enclosures in the same location.

Clarification was requested regarding the definition of pedestals. It was understood that these activities would be largely utilities hand digging around their own infrastructure, and that it was understood that utilities are present in these environments without necessitating locates.

6. Tilling for sowing of grass and wildflower coverings for erosion control or beautification purposes.

There was discussion if this type of activity was already covered in the agricultural exemption. The Subcommittee ultimately agreed that although the activity may be similar, this would likely not be considered an “agriculture operation”, thus not applicable.

No other concerns were raised.

7. Placement of temporary signage.

What does temporary mean?

What types of signs would be included?

It was suggested that the Subcommittee consider a “max size” for the “post” as a means to further clarify the intent of this exemption.

8. Addition or removal of roadside berm material.

Concerns were expressed similar to proposed exemption #2 for Milling. Several cases cited of utilities, including gas lines, electric and fiber, located just 3 inches below the surface in asphalt, concrete and substrate. “Isn’t the replacement of roadside berms a planned activity?” Again, questions were raised as to how/why utilities are installed at so shallow of a depth.

Next Steps:

“Continued progress of the efforts of the Exemptions subcommittee is going to absolutely require give and take.”

This language represents significant compromise and steps forward in identifying activity based exemptions and movement from the status quo. Yet there still remains disagreement on several items. Subcommittee members are encouraged to engage in discussions to seek common ground on these items. Without positive results from those discussions, it is unlikely we will be in a position to move this language on to the full Coalition for further review.