

OUDDPC Quarterly Meeting

3/23/2023

Minutes

Welcome: Co-Chairs Greg First and Michael Wilson called the meeting to order.

Roll Call: Greg First (Co-Chair), Michael Wilson (Co-Chair), Johnny Henson, Clayton Heitz, Jim Mander, Patrick Murphy, Sean Stringer, Jennifer Reams, Brian Hickman, Roger Lipscomb, Jim Wooten, Jim Collins, Pete Chace, Al Tonetti, Lori Wade, Deron Large, Brian Glaunsinger, Scott Mergler, Jason Broyles, Jeff Kursman, Yancy Deering.

Opening Remarks: Co-Chair First discussed the order and tone leadership desired for the meeting. It was stressed that all participants should be focused on what is best to enhance safe excavation in Ohio.

Purpose Statement: Roger Lipscomb of OHIO811 proposed updating the purpose statement of the OUDPC. It was suggested that "The purpose of" should be added to the beginning. There was discussion around whether excavating should be included and how broad the statement should be. In the end, it was decided that the language would read:

The purpose of the Ohio Underground Damage Prevention Coalition (OUDPC) is to promote public safety; a dedicated group of leaders who serve their industries and communities by working to create and advocate for legislation that will enhance public safety and address the needs of the excavation damage prevention industry within the Ohio Revised Code (ORC). These efforts will make Ohio a safer place to live and work.

Guidelines of Engagement: Roger Lipscomb led the discussion on Guidelines for Engagement:

- Actively participate as part of the team in order to fulfill the Coalition's goals.
- Actively listen when someone is speaking; listen to understand and not necessarily to respond.
- Not interrupt others.
- Respect all communication styles and personalities.
- Keep comments brief and to the point.
- Be hard on issues and soft on people.
- Refrain from sidebar discussions.
- Review, read required materials and be knowledgeable about prior meeting minutes.
- Work a problem with consideration that everyone is doing their portion of the work diligently. Avoid the mindset that... "they can't do it now, how will they ever do it under the new regulation."
- While you are here to represent your industry and your organization, it is important to rise above that and consider the safety of all Ohioans and the greater good of the industry.

Alignment/Next Steps: It was pointed out that several legislators have stated that alignment of the entire industry supports potential passage of legislation. Therefore, it is important that the Coalition, and its subcommittees, work through the process to engage all stakeholders.

Any proposed changes that are agreed to during a Coalition meeting will be presented to the entire Coalition Membership list with a set number of days for individuals, companies and groups to make comment. At the end of that period, the assigned subcommittee will reconvene with the purpose of addressing feedback brought up during the comment period.

When that is complete, the subcommittee will present the proposal to the Coalition for a final vote. That vote will be done by industry groups, not just by company representatives.

It was also explained how proposed legislation would move forward once approved by the Coalition. The industry government affairs personnel would secure a sponsor in both the House and the Senate. Those sponsors will then submit the text to the Legislative Services Commission, which would draft the bill. That bill then would be assigned it to a committee.

The committee would conduct hearings of proponents and opponents and could propose amendments to the bill(s). If it passes committee, then it would go to the full body. The same process would take place in the House and Senate. If it passes both, then it would be sent to the governor for signing the bill.

There was discussion on whether the comment period of any proposals put forth by the Coalition should be 45-days or 60-days. After a short discussion, a vote (15-in favor, 0-opposed) decided that moving forward, the comment period will last for 45-days.

An additional vote to approve the purpose statement was taken. By a 15-0 (1-abstained) vote, the language was adopted.

It was further stated that OHIO811, as secretary of the OUDPC, would post the minutes of each meeting that provided details of any proposals to the [OUDPC web page](#) and would post comments/responses on a weekly basis. OHIO811 will also e-mail any proposed changes to Coalition members via OUDPC@oups.org.

Exemptions Subcommittee Report: Subcommittee Chair Sean Stringer provided the subcommittee report

Sean presented the proposed changes as follows:

3781.25(l) "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, unless otherwise stated. "Excavation" excludes coal mining and reclamation operations regulated under Chapter 1513 of the Revised Code and rules adopted under it.

1. Milling and grinding of asphalt road surfaces no greater than 4 inches, excluding pulverizing activities and activities at signalized intersections and where signal and/or environmental sensors may be present.
2. 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.
3. Utility wood pole inspection utilizing hand tools to excavate and working on the clear side of poles, greater than 90 degrees from any risers.
4. Tilling for sowing of grass and wildflower coverings no more than four inches deep for erosion control or beautification purposes.
5. Placement of temporary signage, not to exceed four inches deep.
6. Addition or removal of roadside berm material.

Sean explained to the Coalition how the subcommittee came to this language:

Milling and Grinding: Sean reported that there was discussion surrounding the four-inch exemption. Some pointed out that no grinding activity is uniform in depth. However, most were pleased that the proposed language allows for grinding up to four inches, which is not currently allowed without making a locate request.

Sean reported that the subcommittee voted to forward this proposal to the full coalition. The vote was 15 approved, no opposition, 1 abstained.

Underground Utility Locating: Sean reported there was little discussion around this issue, but it was agreed that the 12-inch specification at the beginning of new proposed language was sufficient.

Sean reported that the subcommittee voted to forward this proposal to the full coalition. The vote was 15 approved, no opposition, 1 abstained.

Utility Wood Pole Inspection: Sean noted that a brief discussion pointed out the need to educate contractors about the new language. It was agreed that OHIO811's liaisons would do the bulk of that education.

Sean reported that the subcommittee voted to forward this proposal to the full coalition. The vote was 15 approved, no opposition, 1 abstained.

Tilling for Sowing Grass/Wildflower Coverings: Sean reported that the subcommittee voted to forward this proposal to the full coalition. The vote was 15 approved, no opposition, 1 abstained.

Placement of Temporary Signage: Sean stated that the subcommittee noted that construction signs typically do not penetrate the ground, they are set on top of the

surface of the road/sidewalk/dirt. However, for political signs, realtor signs, etc., this would still be applicable.

Sean reported that the subcommittee voted to forward this proposal to the full coalition. The vote was 15 approved, no opposition, 1 abstained.

Removal of Berm Material: Sean reported that the subcommittee voted to forward this proposal to the full coalition. The vote was 15 approved, no opposition, 1 abstained.

Clearing Debris from Roadside Drainage/Ditching: Sean noted that the subcommittee discussed about how this might affect the more rural communities with smaller staffs. The subcommittee voted to remove this exemption. The vote was 16 approved, no opposition, no abstained.

Utility Pedestal Replacement: There was universal agreement that this should not be an exemption because there would be additional excavation needed even if the replacement used the same footprint. The committee voted to remove this exemption. The vote was 16 approved, no opposition, no abstained.

The Coalition voted to approve the proposed language. The vote was 15 in-favor, 0-opposed, 0-abstained.

Utility Coordination Subcommittee Report: Subcommittee Co-Chairs Clayton Heitz and Jim Wooten provided the following subcommittee report:

Ticket Life: 30-Day Ticket Expiration: Explanation was provided that the current 10-day deadline pertains to when excavation must begin, whereas this change would cause a ticket to expire after 30 calendar days. It was also explained that the 30 days was the equivalent of four weeks, plus two days (48 hours) for the site to be marked after the new ticket is requested.

Clayton explained that during the discussion it was expressed that some contractors, especially smaller companies, felt this would add an extra work for managing tickets. It was also pointed out that Ohio is one of the few states that does not have a life of a ticket and that the 30-day proposal is longer than many states have. Further, it was stated that it is hoped that the 30-day ticket life might cause fewer locate requests because some contractors believe that requests need to be made every 10 days.

The proposed changes are as follows:

3781.31(B) If the markings of underground utility facilities made under section 3781.29 of the Revised Code are destroyed or removed before excavation is completed, the excavator shall notify the utility through the protection service that the markings have been destroyed or removed, and the utility shall remark the facilities in accordance with section 3781.29 of the Revised Code. A ticket will be valid for 30-calendar days from the date of notification to the Protection Service, provided markings are visible and continue to clearly identify the approximate location and direction of underground utility facilities.

If the markings are not visible and/or clear, the ticket is no longer valid, even if it has been less than 30 days since notifying the Protection Service. If excavation activity is required to extend past 30 calendar days, the excavator shall notify the protection service as required in 3781.28(A).

Clayton reported that the subcommittee voted to forward this proposal to the full coalition. The vote was 10-in favor, 6-opposed and 1-abstained.

Ticket Life: 16-Day Commencement of Excavation Requirement: This would replace the current 10-day deadline on beginning an excavation. The 16 days was considered to be two full weeks and two days (48 hours for marking). Clayton reported that it was pointed out that this made scheduling easier because contractors would not have to count weekends or holidays.

The proposed language change is as follows:

3781.28 **Excavator notifying protection service or pipeline**
*(A) Except as otherwise provided in divisions (C), (D), (E), and (F) of this section, at least forty-eight hours, **not including weekends and holidays,** but not more than ~~ten working~~ **16 calendar** days before commencing excavation, the excavator shall notify a protection service of the location of the excavation site and the date on which excavation is planned to commence. **If the excavation is not started within 16 calendar days, the ticket will be considered no longer valid.***

Clayton reported that the subcommittee voted to forward this proposal to the full coalition. The vote was 16-in favor, 0-opposed and 1-abstained.

Scope of a Ticket: Geographic Limitations to the Size of the Ticket: Jim explained that this language came from the need to break large tickets into smaller tickets so that there is a better chance of markings happening in a timely manner. He noted that smaller contractors are worried this would add to their workload. Further, there was discussion that this may not fix the issue.

Those in favor of limiting the geographic size pointed out that more tickets allows for several tickets to be completed and excavation could begin, even if the entire project cannot be marked in the 48 hour limit.

Jim reported that the subcommittee's vote was deadlocked and it cannot forward this proposal to the full coalition. The vote was 7-in favor, 7-opposed and 4-abstained.

The Coalition discussed this issue as a group. It was suggested that the subcommittee continue to work on this issue. There was some agreement that the subcommittee consider language that would differentiate geographic limitations for urban and rural excavation. It was also suggested that the subcommittee survey other members of the Coalition and industry.

Utility Coordination: Jim then provided an update on the Utility Coordination proposal. He stated that there was concern that this gives utility owners/operators the ability to halt a project at the last minute. There was discussion at the subcommittee around how complex project status should be made during the design phase, but it was also pointed out that there is no design requirement in Ohio. It was noted that very few meetings take place through OHIO811, however, many contractors do frequently work directly with utilities to plan larger/complex projects.

Jim reported that the subcommittee did not vote on this issue.

There was discussion during the Coalition meeting that the subcommittee consider language that would define a complex project and how that might help reach the goals that Utility Coordination language is attempting.

Remove Limited Basis Participant (LBP) Language from O.R.C.: Jim explained that this language is no longer applicable and all but a handful of LBP's have been converted to regular membership.

The following changes to the O.R.C. would be made under this proposal:

3781.26 (Effective 3/27/2013) Protection service for underground utility facilities

~~A) Each utility that owns or operates underground utility facilities shall participate in and register the location of its underground utility facilities with a protection service that serves the area where the facilities are located. A utility may elect to participate in the service on a limited basis and if it does so, it shall register the location of its underground utility facilities by identifying the municipal corporations, and outside the limits of a municipal corporation, the townships by county and, where applicable, the immediate geographic area in which it has facilities. The service shall establish reasonable fees for limited basis participants.~~

~~(D) Each utility fully participating in a protection service pursuant to this section shall also participate in its affiliated positive response system. Each utility participating in a protection service on a limited basis shall directly communicate to the excavator the presence or absence of any conflict between the existing underground utility facilities and the proposed excavation site.~~

~~(B) Except in the case of limited basis participants, the protection service shall provide notice of the proposed excavation to each participant in the service that has underground utility facilities in the area of the proposed excavation site. Except as provided in section 3781.271 of the Revised Code, in the case of limited basis participants, the protection service shall notify the developer or the designer employed by the developer of the name of each limited basis participant with underground utility facilities within the municipal corporation or township and county of the proposed excavation site, and the developer or designer shall contact that utility.~~

(E)

(1) Based on the information provided pursuant to division (C) of this section, the developer or the designer employed by the developer shall indicate the approximate locations of underground utility facilities either on or with the plans prepared for the project. The developer or designer shall include with the plans the names, addresses, and telephone numbers of utilities with underground facilities at the excavation site, ~~indicating which utilities are limited basis participants~~; the name and telephone number of any appropriate protection service; and any required adjustments as described in division (D) of this section, including the reasonable time necessary for the utility to make those adjustments. In the case of an interstate hazardous liquid pipeline or an interstate gas pipeline, the developer or designer also shall include any special notification requirements.

(F)

(1) This section does not apply in the case of a utility making emergency repair to its own underground utility facility.

(2) This section does not apply in the case of the owner of the types of real property identified in divisions (C)(1) to (4) of section 3781.25 of the Revised Code, unless the owner employs a designer to make written plans for work that will involve excavation. ~~If the owner employs a designer, the designer shall contact a protection service and utilities that are limited basis participants in accordance with divisions (A) and (B) of this section, and shall include in or with the plans the information required under division (E) of this section.~~ The owner shall provide that information to the excavator.

3781.271 (Effective 3/27/2013) Modification of one-call notification system

Beginning on July 1, 2013, each protection service shall reasonably modify its one-call notification system so as to permit the reasonable identification of the location of a proposed excavation site ~~in a manner in which the protection service may then notify any potentially affected limited basis participants~~. Each member of a protection service, ~~including limited basis participants~~, shall be responsible for providing current contact information to the protection service.

781.28 (Effective 3/27/2013) Excavator notifying protection service or pipeline owner

(F)

(1) In the case of a utility that is making an emergency repair to its own underground utility system or a governmental entity making an underground emergency repair to traffic control devices, as defined in section 4511.01 of the Revised Code, used on any street or highway under the entity's jurisdiction, the utility or governmental entity shall

notify a protection service and each limited-basis participant of the excavation site. This notice need not occur before commencing excavation.

(2) In the case of an excavation at the site of real property of the type described in divisions (C)(1) to (4) of section 3781.25 of the Revised Code:

(a) If the owner of the property is the excavator, this section does not apply unless the excavation is planned for an area where a utility easement is located, a public right-of-way, or where utility facilities are known to serve the property.

(b) If the owner of the property employs an excavator, the excavator shall comply with the requirements of this section. If the owner did not employ a designer to make written plans, the excavator shall provide the notice required under this section to a protection service and to each utility that is a limited-basis participant in a protection service that has underground utility facilities within the municipal corporation or township and county of the excavation site, as indicated by the protection service.

Jim reported that the subcommittee voted to forward this proposal to the full coalition. The vote was Unanimous.

The Coalition then had a short discussion around moving forward with the three items recommended by the subcommittee. Following that, the Coalition voted in favor of proceeding with the three items by a vote of 15-in favor, 0-opposed and 0-abstained.

It was then voted to provide a 45-day comment period by a vote of 15-in favor, 0-opposed and 0-abstained.

Following the vote, there was discussion as to why the Coalition is moving forward with smaller, individual items instead of preparing a more robust and widespread bill. As has been discussed at previous Coalition meetings; it was stated that there was a better chance of having proposals move forward once there was strong agreement in the industry. That can have the effect of building momentum for the Coalition and support of the industry.

Timing of presenting changes in the O.R.C. was also discussed. It is believed that for any realistic chance of getting legislation passed during this two-year General Assembly, proposals most likely would need to be made by the end of the year.

New Business: Co-Chair First began with a review of previous subcommittees and discussion groups. Three subcommittees were initially created:

- 1) Exemptions
- 2) Size and Scope, and Large Projects
- 3) Accountability for Third Party Locators

Four additionally Discussion Groups were established:

- 1) Abandoned Lines
- 2) Life of a Ticket
- 3) 48 Hour Waiting Period
- 4) Training

The Accountability for Third Party Locators announced that it would no longer pursue this issue. The Life of a Ticket became part of the Size and Scope, and Large Projects subcommittee.

Based on industry feedback, OHIO811 recommend that the Coalition consider focusing on the 48-Hour Waiting Period by elevating it as a subcommittee.

Co-Chair First suggested that any action convening any of those original groups should take place during the next Coalition meeting and that there could be a notice for individuals to volunteer to those groups in the meantime.

The meeting was then voted to adjournment.