

Oregon Administrative Rules Committee Minutes

Date: Tuesday, April 4, 2023

Time: 4 – 5 p.m.

Members: Jessica Epley, Micah Brown, Melanie Lewis, Alba Vogland, Jaimie Lemke, Kevin Hennessy, Paul Schmidt, Connor Toney, Megan Moore, Mitch Burghlea, and Lee Tumminello.

Non-Voting Members: Josh Thomas, Kitty O'Keefe, and Kim Boyd

1. Announcements and Introductions

- a. Announcements and Guest sign-in
- b. Meeting Minutes from 12.14.22 approved. Kitty to post on website.
- c. Comments from the Chair – Jessica welcomed members and guests.

2. OAR Committee Updates on Rulemaking Process

- a. OAR 952-001-0050 (2) – relating to non-invasive excavation within a defined enclosure

Proposed language: The notice requirement of section (1) of this rule does not apply if the excavation is in response to an emergency, **is made with non-invasive tools within a defined enclosure (i.e. valve and meter boxes and vault(s) that does not exceed the depth of the structure**, or if all of the following apply:

- (a)The excavator is a tenant or an owner of private property;
- (b)The excavation is on private property of that owner or tenant;
- (c)The excavation is less than 12 inches in depth; and
- (d)The excavation is not within an established easement.

Committee Actions: Jessica stated this is pending for rulemaking. Not moving forward as we try to bundle as many that will go through rulemaking.

3. Old Business

- a. OAR Committee Review of Proposed Rulemaking
 - i. OAR 952-001-0010 (10) – defining 'large area'

Proposed language: "Large area" means **a project that exceeds seven hundred fifty linear feet.**

Committee Actions: No discussion. Motion to revise the language made by Micah and 2nd by Jaimie. Motion passed. Committee Recommendation to be presented at next board meeting.

- ii. OAR 952-001-0040 – amending language for requiring excavators to pre-mark all proposed excavation in white paint.

Committee Actions: Committee discussed language options. Kevin shared the benefits of rewriting the entire section. He does have some proposed language he could share later. Micah commented previous discussions of white paint exceptions. Mitch feels it's not a necessary requirement; excavators need options. Connor says either white paint required or communicated. Micah & Alba agree to re-write the rule. Jaimie & Lee want to make sure virtual white lining is in the language since technology is staying. Kevin volunteered to work on language by April 10th to Jessica.

- iii. OAR 952-001-0080 – amending rule to provide for design information review

Proposed language: (1) Within 10 business days after a designer notifies the Oregon Utility Notification Center of a proposed project, the operator of the underground facilities must:

- a. Mark within 24 inches of the outside lateral dimensions of both sides of all of its locatable underground facilities within the area of proposed excavation. All marks must

indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than 2 inches;

b. Provide the excavator the best description available to the operator of the unlocatable underground facilities in the area of the proposed excavation including as-constructed drawings, or other facility maps that are maintained by the facility operator; or

c. Providing copies of the best reasonably available records by electronic message, mail, facsimile, or other delivery method. (RCW 19.122.030 (4)(b)(iii))

d. Contact the person requesting design information and agree on a time, prior to the beginning of the proposed project, for exchange of the information required under subsection (a) or subsection (b) of this section of this rule.

(2) If a designer intends to perform work at multiple sites or over a large area, the designer must take reasonable steps to work with the facility operators, including preconstruction meetings, so that the operators may locate their facilities at a time reasonably in advance of the actual start of survey or design for each phase of work.

Committee Actions: Josh reminded members the intent was to provide operationally via the Call Center. Included copy to mirror Washington. Jaimie asked if we need to keep fax info? Yes, we do. Motion by Micah to adding sub C to existing rule. Alba 2nd. Motion passed. Committee Recommendation to be presented at next board meeting.

- b. OAR Committee Review of Changes to Oregon Revised Statutes
 - i. ORS 757.552.(2)(c) – remove outdated reference to 1995 Standards Manual.

Proposed language: (c) Adopt rules according to ORS chapter 183 that regulate the notification and marking of underground facilities to prevent damage to underground facilities. ~~The rules, insofar as is practicable, shall be consistent with the Oregon Utilities Coordinating Council Standards Manual of March 31, 1995.~~

Committee Actions: Jessica recommends a removal of this language. Motion by Jaimie and 2nd by Connor. Motion carries. Committee Recommendation to be presented at the next board meeting.

- ii. ORS 757.552(4) – remove all exemptions to participation in the Oregon Utility Notification Center rates.

Proposed language: ~~(4) Notwithstanding subsection (2)(b) of this section, the board of directors shall not establish rates or other charges that require payments from any subscriber who receives fewer than 50 telephone calls in the calendar year or that result in annual payments of more than \$500 for any of the following subscribers:~~
~~(a) Cities with a population under 15,000;~~
~~(b) Telecommunications utilities serving fewer than 50,000 access lines and regulated by the Public Utility Commission under ORS chapter 759;~~
~~(c) Cable system operators serving fewer than 15,000 customers;~~
~~(d) Utilities, special districts, people's utility districts or authorities providing electricity, water or sanitary sewer service to fewer than 15,000 residential customers; and~~
~~(e) Telecommunications cooperatives.~~

Committee Actions: Josh shared the process will include extensive stakeholder outreach and engagement to build advocacy support for these items before the 2025 legislative session (the soonest this matter could be engaged with the legislature). Jaimie commented larger stakeholders end up paying more. Jessica recommends a motion to strike all exceptions from ORS 757.552(4). Mitch 2nd. Motion passed. Committee Recommendation to be presented at the next board meeting.

4. New Business

- a. OAR 952-001-0100 – Relating to record keeping for abandoned facilities (Kyle Thomas)

Committee Action: No action taken as additional information was not provided by Kyle to explain the request to Committee. To be retained on the agenda and moved to old business for next Committee meeting.

- b. Creating a damage ticket (Melanie Lewis)

Committee Action: No action taken as additional information was not provided by Melanie to explain the request to Committee. To be retained on the agenda and moved to old business for next Committee meeting.

c. Reducing 45-day ticket life (Jaimie Lemke)

Committee Action: Connor asked what other states follow the 28 days. Jaimie shared CA, NV, IL & HI. Significant amount of states with 28 days or fewer as reported on White Paper. Micah feels 45 or 28 days does not affect the locator. Influx of tickets... can we meet the 2-business day requirement? NW #'s: WA-45 days, ID-21 days and MT-30 days. After further discussion by all members, Jessica feels they do not have a clear recommendation. Jessica asked Kevin to provide CGA recommendation for next meeting. Kevin emailed a copy to Kitty. Jessica asked members to review the White Paper and will update the work log. To be retained on the agenda and moved to old business for next Committee meeting.

d. Define noninvasive tools (Jaimie Lemke)

Committee Action: No action taken. To be retained on the agenda and moved to old business for next Committee meeting.

e. Review exemptions for sidewalk and road maintenance referenced in OAR 952-001-0010 (22) and ORS 757.542(3) (Jaimie Lemke)

Committee Action: No action taken. To be retained on the agenda and moved to old business for next Committee meeting.

f. Requiring new utilities to be locatable (Jaimie Lemke)

Committee Action: No action taken. To be retained on the agenda and moved to old business for next Committee meeting.

g. Review effective enforcement for dig law violations (Jaimie Lemke)

Committee Action: No action taken. To be retained on the agenda and moved to old business for next Committee meeting.

5. For the Good of the Order

6. Next Meeting: tbd

Meeting adjourned at 5pm. Minutes submitted by Kitty O'Keefe on April 5, 2023

Date	Rule/Statute	Language	Issue	Proposed Language	OAR Committee Status	OUNC Board Status	Rulemaking Status
5/29/2019	OAR 952-001-0050 (2)	The notice requirement of section (1) of this rule does not apply if the excavation is in response to an emergency, or if all of the following apply: (a)The excavator is a tenant or an owner of private property; (b)The excavation is on private property of that owner or tenant; (c)The excavation is less than 12 inches in depth; and (d)The excavation is not within an established easement.	Add an additional exception to addressing the requirement for notification when work is to take place within an established or pre-existing facility enclosure	OAR 952-001-0050 (2) The notice requirement of section (1) of this rule does not apply if the excavation is in response to an emergency, is made with non-invasive tools within a defined enclosure (i.e. valve and meter boxes and vaults) that does not exceed the depth of the structure, or if all of the following apply: (a)The excavator is a tenant or an owner of private property; (b)The excavation is on private property of that owner or tenant; (c)The excavation is less than 12 inches in depth; and (d)The excavation is not within an established easement.	Recommended revision to Board (08-12-20) Proposed Language on file, waiting to file rule change	OUNC Board approved recommendation (08-12-20)	Rulemaking notice to be prepared and process started by Josh (Rules Coordinator)
5/29/2019	OAR 952-001-0010 (10)	"Large area" means a proposed excavation requiring more work or time to locate utility facilities than can reasonably be completed within the parameters of section (1) of 952-001-0050.	Drafting language for amending/adopted rule for "Ticket Length" of 750 feet.	(RCW 19.122.020 - 15) "Large project" means a project that exceeds seven hundred linear feet. "Large area" means a project that exceeds seven hundred fifty linear feet.	Recommended revision to Board (04-04-23) Proposed Language on file, waiting to file rule change		
3/4/2021	OAR 952-001-0040	(1) Except as provided in section (2) of this rule, prior to notifying the Oregon Utility Notification Center, an excavator must pre-mark with the color white the immediate area of the proposed excavation within both the public rights-of-way and underground easements. (2) An excavator need not pre-mark as required in section (1) of this rule if: (a) The operator can determine precisely the direction, length and location of the proposed excavation by referring to a locate ticket; or (b) before the beginning of the proposed project, the excavator and the operator met at the construction site to exchange the information required under section (1) of this rule.	Amending language for requiring excavators to pre-mark all proposed excavation in white paint.	(RCW 19.122.030 (1)(a)) Unless exempted under RCW 19.122.031, before commencing any excavation, an excavator must mark the boundary of the excavation area with white paint applied on the ground of the worksite, then provide notice of the scheduled commencement of excavation to all facility operators through a one number locator service. (b) If boundary marking required by (a) of this subsection is infeasible, an excavator must communicate directly with affected facility operators to ensure that the boundary of the excavation area is accurately identified. ALTERNATIVE: Prior to phoning in the excavation area in which the customer/contractor is requesting underground utilities marked, it is the excavators (homeowner or contractor) responsibility to mark with white paint, the perimeter in which the ground movement and/or excavation shall take place. In the event of adverse weather conditions, a wooden stake painted with white on the top 6" will be used. The work area shall be designated directly on the ground. Marking with string and any other means is not recognized. Once the area has been marked or staked, it is then the Locate Ticket can be called in to 811. Note: In the event that white paint or stakes are not present, the ticket is null and void and the Locate Technician will contact the individual requesting the locate to cancel the ticket, mark or stake and then they will return to complete the utility identification.	New language to be provided by Kevin by 4/10		
7/10/2020	OAR 952-001-0080	(1) Within 10 business days after a designer notifies the Oregon Utility Notification Center of a proposed project, the operator of the underground facilities must: a. Mark within 24 inches of the outside lateral dimensions of both sides of all of its locatable underground facilities within the area of proposed excavation. All marks must indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than 2 inches. b. Provide the excavator the best description available to the operator of the unlocatable underground facilities in the area of the proposed excavation including as-constructed drawings, or other facility maps that are maintained by the facility operator; or c. Contact the person requesting design information and agree on a time, prior to the beginning of the proposed project, for exchange of the information required under subsection (a) or subsection (b) of this section of this rule. (2) If a designer intends to perform work at multiple sites or over a large area, the designer must take reasonable steps to work with the facility operators, including preconstruction meetings, so that the operators may locate their facilities at a time reasonably in advance of the actual start of survey or design for each phase of work.	Survey Design Locates: Reduce unnecessary locates	(1) Within 10 business days after a designer notifies the Oregon Utility Notification Center of a proposed project, the operator of the underground facilities must: a. Mark within 24 inches of the outside lateral dimensions of both sides of all of its locatable underground facilities within the area of proposed excavation. All marks must indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than 2 inches; b. Provide the excavator the best description available to the operator of the unlocatable underground facilities in the area of the proposed excavation including as-constructed drawings, or other facility maps that are maintained by the facility operator; or c. Providing copies of the best reasonably available records by electronic message, mail, facsimile, or other delivery method. (RCW 19.122.030 (4)(b)(iii)) d. Contact the person requesting design information and agree on a time, prior to the beginning of the proposed project, for exchange of the information required under subsection (a) or subsection (b) of this section of this rule. (2) If a designer intends to perform work at multiple sites or over a large area, the designer must take reasonable steps to work with the facility operators, including preconstruction meetings, so that the operators may locate their facilities at a time reasonably in advance of the actual start of survey or design for each phase of work. ALTERNATE LANGUAGE: (1) Within 10 business days after a designer notifies the Oregon Utility Notification Center of a proposed project, the operator of the underground facilities must:	Recommended revision to Board (04-04-23) Proposed Language on file, waiting to file rule change		
9/14/2022	ORS 757.552(4)	(4) Notwithstanding subsection (2)(b) of this section, the board of directors shall not establish rates or other charges that require payments from any subscriber who receives fewer than 50 telephone calls in the calendar year or that result in annual payments of more than \$500 for any of the following subscribers: (a) Cities with a population under 15,000; (b) Telecommunications utilities serving fewer than 50,000 access lines and regulated by the Public Utility Commission under ORS chapter 759; (c) Cable system operators serving fewer than 15,000 customers; (d) Utilities, special districts, people's utility districts or authorities providing electricity, water or sanitary sewer service to fewer than 15,000 residential customers; and (e) Telecommunications cooperatives.	Removal of all exemptions from participation in the Utility Notification Center	STRIKE all of ORS 757.552(4)	Recommended revision to Board (04-04-23)		
2/8/23	ORS 757.552 (2)(c)	(c) Adopt rules according to ORS chapter 183 that regulate the notification and marking of underground facilities to prevent damage to underground facilities. The rules, insofar as is practicable, shall be consistent with the Oregon Utilities Coordinating Council Standards Manual of March 31, 1995.	Remove reference to 1995 manual	(c) Adopt rules according to ORS chapter 183 that regulate the notification and marking of underground facilities to prevent damage to underground facilities. The rules, insofar as is practicable, shall be consistent with the Oregon Utilities Coordinating Council Standards Manual of March 31, 1995. (STRIKE)	Recommended revision to Board (04-04-23) Proposed Language on file, waiting to file rule change		



2/8/23	OAR 952-001-0100	(1)Abandoned Facilities: Except as provided in section (3) of this rule, all operators must maintain records, by mapping or other means, of all underground facilities abandoned on or after April 1, 2002, that show: (a)The location of such facility to the level of detail when abandoned; (b)The date of abandonment of such facility; and (c)Whether each such facility is a locatable underground facility or an unlocatable underground facility. (2)Out-of-Service Facilities: Except as provided in section (3) of this rule, all operators must maintain records, by mapping or other means, of all underground facilities placed in out-of-service status on or after April 1, 2002, that show: (a)The location of such facility to the level of detail when placed in out-of-service status; (b)The date of abandonment of such facility; and (c)Whether each such facility is a locatable underground facility or an unlocatable underground facility. (3)These record keeping requirements do not apply to operators who provide telecommunications, CATV or electric service for the underground facilities located between the operator's system and the customer's point of service.	Kyle: Discusses record keeping but only of abandoned facilities and out of service. Generally, it can be implied that operators are responsible to provide accurate mapping of facilities as apart of subscribing to the OCC. With the launch of the new ITIC system mapping is critical to damage prevention and revenue generation.		OAR New Business		
2/8/23	TBD	TBD	Melanie: Anytime there is a damage, a ticket will need to be called in. This practice could assist the OUNC, utilities and excavators in tracking damage issues.	Damage Reporting: The immediate reporting to a one-call center and the facility owner/operator of any damage caused or discovered in the course of excavation or demolition work, to immediately alert the occupants of premises as to any emergency that such person may create or discover at or near such premises, to contact emergency responders, if necessary, as quickly as practical.	OAR New Business		
2/8/23	OAR 952-001-0010 Definitions		Send positive response discussion to OAR Committee for discussion of correspondence and naming conventions for "Status" and "Does Not Participate."		OAR CHAIR REPORT: This needs to be vetted through OCC to determine what changes are possible. It is unclear if this is required as a rule change or system modification.		
2/8/23	OAR 952-001-0010 (23) Definitions	(23) "Ticket life" means the 45 calendar day period after an excavator provides notice to the Oregon Utility Notification Center under OAR 952-001-0050(1) and the Center opens a ticket for a locate request based on this notice.	Longevity of One Call Ticket. American Gas Association Whitepaper FAQ 15, 18; stale locates is a concern.	(23) "Ticket life" means the 45 28 calendar day period after an excavator provides notice to the Oregon Utility Notification Center under OAR 952-001-0050(1) and the center opens a ticket for a locate request based on this notice.	Kevin to provide CGA information on how this will reduce damages. To be reconsidered at next meeting.		
2/8/23	OAR 952-001-0010 Definitions	(13) "Non invasive methods" means using a practice to expose an underground facility that does not damage any part of the facility.	Define non-invasive tools	(13) "Non invasive methods" means using a practice to expose an underground facility that does not damage any part of the facility; including the use of hand tools, air cutting, vacuum excavation or hydro vacuum excavation.	OAR New Business		
2/8/23	OAR 952-001-0090		Review definitions for Excavator, Action to Protect, Halt/Do Not Proceed, If Damage Occurs, Facility Repair, Concealment/Permission, Unreasonable Locate Scope	Add the following to OAR 952-001-0090 Facility Repair: An excavator shall delay any backfilling in the immediate area of the damaged underground facilities until the damage has been repaired, unless the operator authorizes otherwise. The repair of such damage must be performed by the operator or by qualified personnel authorized by the operator. Concealment/Permission: In the event of any damage, dislocation, or disturbance to any underground facility, the person responsible for the excavation operations shall not conceal or attempt to conceal such damage, dislocation, or disturbance, nor shall that person attempt to make repairs to the facility unless authorized by the underground facility owner. Unreasonable Locate Scope: If excessive and unreasonable requests for marking are made by an excavator when no excavation is taking place within fourteen (14) calendar days, the excavator may be liable to the owner or operator for the reasonable cost of such marking.	OAR New Business		
2/8/23	OAR 952-001-0010 (8) Definitions	(8) "Excavation" means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except sidewalk, road and ditch maintenance less than 12 inches in depth that does not lower the original grade or original ditch flow line. "Excavation" does not include the tilling of soil for agricultural purposes conducted on private property that is not within the boundaries of a recorded right-of-way or easement for underground facilities.	Review exemptions for sidewalk and road maintenance	(8) "Excavation" means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except sidewalk and ditch maintenance less than 12 inches in depth that does not lower the original grade or original ditch flow line. "Excavation" does not include the tilling of soil for agricultural purposes conducted on private property that is not within the boundaries of a recorded right-of-way or easement for underground facilities.	OAR New Business		
2/8/23	OAR 952-001-0010 (22) Definitions	(22) "Sidewalk, road and ditch maintenance" includes, but is not limited to, ditching, grinding, paving, shoulder maintenance, surveying, or grading. Unless otherwise classified on roadway plans, parallel or lateral ditches constructed as an integral part of the graded roadbed having a continuous slope from the outer limit of the shoulder to the bottom of the ditch to include ditch back slope within right of way will be considered to be within the roadway grading limits and will be part of the work covered by road and ditch maintenance that does not lower the original road grade or the original ditch flow line. For purposes of this definition, the phrase "original road grade" refers to the original elevation of the road before gravel, rock, asphalt, cement, or other materials were applied on the ground to construct or finish a road. For purposes of this definition, the phrase, "original ditch flow line" means the documented or calculated grade between the outlet elevation of a culvert, drainage structure, water source, or place of origin to the inlet elevation of a culvert, drainage structure, water source or place of destination. Also for purposes of this definition, "sidewalk maintenance" includes but is not limited to removal and replacement of a sidewalk that is performed less than 12 inches in depth and does not lower the original grade of the sidewalk.	Review exemptions for sidewalk and road maintenance	Eliminate exemptions for sidewalk and road maintenance, continue exemption for ditch maintenance. "Ditch maintenance" includes, maintenance that does not lower the original ditch flow line. For purposes of this definition, the phrase, "original ditch flow line" means the documented or calculated grade between the outlet elevation of a culvert, drainage structure, water source, or place of origin to the inlet elevation of a culvert, drainage structure, water source or place of destination.	OAR New Business		
2/8/23	ORS 757.542(3) Definitions	(3) "Excavation" means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except sidewalk, road and ditch maintenance less than 12 inches in depth that does not lower the road grade or original ditch flow line. "Excavation" does not include the tilling of soil for agricultural purposes conducted on private property that is not within the boundaries of a recorded right of way or easement for underground facilities.	Review exemptions for sidewalk and road maintenance	See line 15	OAR New Business		
2/8/23	OAR 952-001-0070 (10)	(10) Except while making minor repairs to existing non-conductive, unlocatable facilities, an operator burying non-conductive, unlocatable facilities within the public rights-of-way or utility easements must place a tracer wire or other similar conductive marking tape or device with the facility to allow for later location and marking.	Require all newly installed facilities to be locatable - including water and sewer	Appears to be covered by OAR 952-001-0070 (10). Any known issues with compliance?	OAR New Business		

2/8/23	Complaint process pg. 39 of Standards Manual	The complaint process is initiated by a Request for Administrative Action (RAA). The RAA procedure provides the mechanism for reporting possible violations of the Oregon excavation laws. The RAA process and explanation for how to proceed with filing a complaint is available online at www.digsafetv.org or from the One Call Center at (503) 232-1987. Oregon law provides that a violation of any rule of the Oregon Utility Notification Center (OUNC) shall incur a penalty of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation. In addition to all other penalties provided by law, every person who intentionally violates or who intentionally procures, aids or abets in the violation of any rule of the OUNC shall incur a penalty of not more than \$5,000 for the first violation and not more than \$10,000 for each subsequent violation.	Review effective enforcement for dig law violations	https://digsafetv.org/complaint-process/ https://digsafetv.org/enforcement-actions/	OAR New Business		
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Applies to line 19

Below is a list of activities that, collectively, could represent active, effective enforcement for all stakeholders:

- Ability to impose monetary penalties on any entities found to be in violation of state law;
- Ability to impose penalties that are consequential for excavation damages resulting in fatalities or severe damage to the environment;
- A record that demonstrates a balanced approach to issuing penalties and fines;
- Ability to influence behaviors from all stakeholders;
- Ability to shut down an excavator who is digging without a legitimate 811 ticket;
- Ability to revoke professional licenses for excavators;
- Ability to require training for those who are found to excavate without an 811 ticket;
- Transparency in enforcement activities and all matters associated with staffing, funding, and PHMSA review; and
- Staffing that enables timely investigation of damages and imposing enforcement actions